



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, MNSD, CNR, ERP, RP, LRE, FF

Introduction

This was a cross-Application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant submitted an amended Application requesting cancellation of a 10 Day Notice ending tenancy for unpaid rent, that the landlord make emergency repairs, repairs, that conditions be set on the landlord's access to the rental unit and to recover the filing fee cost from the landlord.

The landlord provided affirmed testimony that on April 13, 2010 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each of the tenants in one envelope, via registered mail at the address noted on the Application. A Canada Post tracking number was provided as evidence of service. The landlord checked the Canada Post web site and testified that the tracking information showed that the tenants had each signed accepting the mail on April 21, 2010. Each ten

As each tenant signed the Canada Post confirmation indicating receipt of the mail I find that these documents are deemed to have been served in accordance with section 89 of the Act; however the tenants did not appear at the hearing.

Preliminary Matter

The landlord withdrew the portion of his claim for damage to the furnace.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy agreement requires the tenant to pay monthly rent of \$1,200.00 due on the first day of each month. The tenants paid a security deposit of \$600.00 on December 15, 2009.

The tenants applied to cancel a 10 Day Notice for unpaid rent issued by the landlord, which had an effective date of April 18, 2010. The landlord believes the tenants moved out of the unit 3 to 4 weeks ago, but was not sure of the exact date. The landlord was also aware that the tenants had applied to cancel the Notice, indicating that the tenants expected to possess the rental unit until the time of their hearing today.

The landlord is claiming loss of rent for April, May and June, 2010 in the sum of \$3,600.00.

Analysis

In the absence of the tenants at this hearing, I find that their Application is dismissed.

Therefore, pursuant to section 55(1), which provides:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the **director must grant an order of possession** of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession,
and*

*(b) the director dismisses the tenant's application or upholds the
landlord's notice;*

(Emphasis added)

I find that the landlord is entitled to an Order of possession effective 2 days after service.

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$3,600.00 for April, May and June, 2010, and that the landlord is entitled to compensation in that amount. There is no evidence before me that tenants have not been absent from the rental unit for at least thirty days and their Application disputing the Notice indicated that they did not intend to vacate the rental unit by the effective date of the Notice.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit, in the amount of \$600.00, in partial satisfaction of the monetary claim.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenants. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$3,650.00, which is comprised of \$3,600.00 in unpaid April, May and June, 2010, rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution. The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$600.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$3,050. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The tenant's Application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 02, 2010.

Dispute Resolution Officer