

DECISION

Dispute Codes: OPR, OPB, MNR, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

1. A monetary order pursuant to Section 67;
2. An Order of Possession pursuant to Section 55; and
3. An Order to recover the filing fee pursuant to Section 72.

Both parties appeared at the hearing of this matter. I accept that the tenant was properly served with the Notice to End Tenancy and the Application for Dispute Resolution hearing package.

Both parties were given a full opportunity to be heard, to present evidence and to make submissions. Neither party requested an adjournment or a Summons to Testify.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

Issue(s) to be Decided

Whether the landlord has cause to end this tenancy and receive an Order of Possession and whether the landlord is entitled to monetary order for unpaid rent and recovery of the filing fee.

Background and Findings

Order of Possession

The evidence is that the tenants vacated the rental unit on April 22, 2010 and therefore an Order of Possession is not required.

There is outstanding rent. The tenant(s) has/have not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant(s) has/have been deemed to have accepted the end of the tenancy on the date set out in the Notice.

Monetary Order

Rental Arrears

The tenant disputed the amount of the rental arrears. The landlord testified that the rent was fixed at \$800.00 cash plus agreed maintenance jobs around the property and if those jobs were not performed the rent would be \$1,200.00 per month. There is no written tenancy agreement setting out the terms of the agreement.

The tenant testified that she was served on March 22, 2010 with a 10 day Notice to End Tenancy seeking \$800.00 for March 1, 2010. The tenant says that after being served she met with the landlord and they went to her bank together and she paid the landlord \$500.00 in cash in partial retirement of March's rent. The tenant says she has a receipt in her wallet for this payment but no such receipt was filed in evidence. The tenant says she did not submit the receipt in evidence because she did not know she would have to prove the payment.

The landlord testified that there is no receipt for \$500.00 as no such payment was made. The landlord testified that the tenant paid \$200.00 in cash however this was to retire arrears due February 2010 when the tenants paid only \$600.00 rather than the full cash payment portion of the rent due of \$800.00. Then, after service of the 10 day

Notice to End Tenancy the landlord says the tenant's paid a further \$200.00 towards March's \$800.00 rental arrears leaving a balance owing for March of \$600.00. The landlord testified that the tenants never paid their rent in full and always paid it in a piecemeal fashion. The landlord testified that they did not do any of the work they had agreed to do on the property and therefore the rent should actually be \$1,200.00 per month. However, the landlord concedes that not having put things into writing he would be satisfied to receive rent based only on \$800.00 per month. The parties agree that no rent was paid for April.

The landlord testified that he realized that without a tenancy agreement in writing it is difficult to prove the rental agreement. I agree and I will use the sum of \$800.00 per month as the rent due. While the tenant says she has evidence of having made a larger payment towards March rent, she did not submit that evidence. I will therefore accept the landlord's records and testimony that the tenant paid \$200.00 towards March's rental arrears leaving a balance of owing of \$600.00 for March. The evidence of both parties is that April's rent was not paid in the sum of \$800.00. I will award the landlord the sum of \$1,400.00.

Filing Fees

I find that the landlord is entitled to recover the filing fees paid for this application.

Calculation of total Monetary Award

Rental Arrears	\$1,400.00
Filing Fees for the cost of this application	50.00
Total Monetary Award	\$1,450.00

Conclusion

The landlord is provided with a formal copy of an order for the total monetary award as set out above. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.,
