

DECISION

Dispute Codes CNR, OPR, MNR, MND, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. The tenants applied to cancel a Notice to End Tenancy for unpaid rent. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent; damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; authorization to retain the security deposit; and, recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the submissions of the other party.

The tenants claimed they had not been notified of the landlord's application. The landlord provided evidence that the tenants were notified of the hearing via registered mail. A search of the registered mail tracking numbers showed that the registered mail was unclaimed by the tenants. I was satisfied the landlord sufficiently served the tenants in a manner that complies with the Act and I proceeded to hear the landlord's application. The landlord's application and evidence were described to the tenants during the hearing.

Issues(s) to be Decided

1. Is there a basis to cancel the Notice to End Tenancy for unpaid rent?
2. Is the landlord entitled to an Order of Possession?
3. Is the landlord entitled to a Monetary Order and if so the amount?
4. Is the landlord authorized to retain the tenants' security deposit?

Background and Evidence

The parties provided the following undisputed evidence. The tenancy commenced February 1, 2010 and the tenants paid a \$450.00 security deposit. The tenants are required to pay rent of \$950.00 on the 1st day of every month. On May 5, 2010 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Notice indicates \$1,445.00 in rent was outstanding as of May 1, 2010 and written demand for utilities was made on May 1, 2010 in the amount of \$177.00. On May 5, 2010 the tenant paid the landlord \$480.00.

The parties agreed that as of today's date the tenants owe the landlord for rent for May and June and utilities of \$315.70. The parties agreed that the tenants must vacate the rental unit by June 30, 2010.

As evidence for the hearing, the landlord provided a copy of the Notice.

Analysis

Under the Act, where a tenant is required to pay utilities to the landlord, the tenant has 30 days to pay the utilities after receiving written demand to do so from the landlord. After 30 days a landlord may end the tenancy by issuing a 10 Day Notice for unpaid utilities.

In this case, the documentary evidence indicates the landlord made written demand for utilities on May 1, 2010. Clearly, as of May 5, 2010 the written demand for utilities had not been 30 days outstanding. Therefore, the landlord was not entitled to include utilities on the Notice issued May 5, 2010.

Despite the error in including utilities on the Notice, I am satisfied the tenants owed rent for May and part of April when the Notice was issued. Therefore, I find there are sufficient grounds to uphold the Notice.

As the parties agreed the tenants may occupy the rental unit until June 30, 2010 I provide the landlord an Order of Possession effective June 30, 2010. The Order of Possession must be served upon the tenants and may be filed in The Supreme Court of British Columbia to enforce as an Order of that court.

As the parties agreed upon the amount currently owed to the landlord for rent and utilities, I award that amount to the landlord. I also award the filing fee to the landlord and authorize the landlord to retain the security deposit in partial satisfaction of the rent owed the landlord.

The landlord did not establish an damage to the rental unit and I make no award for damage.

I provide for the landlord with this decision a Monetary Order calculated as follows:

Unpaid rent – May 2010	\$ 950.00
Loss of rent –June 2010	950.00
Utilities	315.70
Filing fee	50.00
Less: security deposit	<u>(450.00)</u>
Monetary Order	<u><u>\$ 1,815.70</u></u>

The landlord must serve the Monetary Order upon the tenants and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord is provided an Order of Possession effective June 30, 2010. The landlord is authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$1,815.70 to serve upon the tenants.

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 18, 2010.

Dispute Resolution Officer