

DECISION

Dispute Codes CNR, OPR, MNR, FF, O

Introduction

This hearing was scheduled to deal with cross applications. The tenant had applied to cancel a Notice to End Tenancy for unpaid rent. The landlord applied for an Order of Possession and Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlord was represented by an agent to whom I have referred to as the landlord in this decision.

The landlord confirmed service of the tenant's Application for Dispute Resolution. Since the tenant did not appear at the hearing and the landlord was prepared to respond to the tenant's Application for Dispute Resolution I dismissed the tenant's application without leave to reapply. The landlord testified the tenant was notified of the landlord's Application for Dispute Resolution by personal delivery a few days after making the application. I was satisfied the tenant was served with the landlord's Application for Dispute Resolution and proceeded to hear from the landlord without the tenant present.

The landlord requested the landlord's Application for Dispute Resolution be amended to include unpaid rent for April and May 2010. The landlord also requested the application be amended to include authorization to retain the security deposit.

Issues(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order, and if so, the amount?
3. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The landlord provided undisputed evidence as follows. The tenancy commenced December 1, 2009. The tenant paid a \$700.00 security deposit. The tenant was required to pay rent of \$1,400.00 on the 1st day of every month.

The landlord testified that on January 28, 2010 the landlord went to the property to pick up rent for February 2010 and prepared a receipt for \$1,400.00. Upon arriving at the rental unit the tenant informed the landlord she only had \$1,100.00. The landlord had already given the tenant the receipt and did not ask for it back. The tenant failed to pay rent for the month of March 2010. The tenant paid \$1,300.00 on April 10, 2010 towards rent owed for April 2010.

The landlord issued a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) on April 21, 2010 indicating rent of \$1,700.00 was outstanding as of April 1, 2010. The landlord stated this amount was for rent owed for February and March 2010 and that this was the amount did not include rent owed for April 2010. The landlord testified that the Notice was posted on the door of the rental unit on April 21, 2010 in the presence of a witness.

In making this application the landlord requested a Monetary Order in the amount of \$1,700.00. The landlord testified that the tenant was seen at the rental unit approximately one week ago and requested the Monetary Order include loss of rent for May 2010 as well as the \$100.00 outstanding for April 2010.

The tenant made an Application for Dispute Resolution to dispute the Notice on April 28, 2010 and stated that the Notice was posted on the door and that the amount on the Notice is incorrect. No other details were provided by the tenant.

Analysis

Where a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent or dispute the Notice. I accept the landlord's testimony that the Notice was posted on the door on April 21, 2010. In accordance with section 90 of the Act, the Notice is deemed to be received by the tenant three days later on April 24, 2010. In this case the tenant disputed the Notice within the time limit imposed by the Act. However, the tenant failed to appear at the hearing and provide evidence that would refute the amount indicated by the landlord on the Notice or show that the Notice should otherwise be cancelled. Therefore, I uphold the Notice and find that this tenancy has ended.

Since the tenancy has ended I find the landlord is entitled to regain possession of the rental unit. I provide to the landlord with this decision an Order of Possession effective two (2) days after service upon the tenant. The Order of Possession may be enforced in The Supreme Court of British Columbia.

Considering the evidence before me, and in the absence of evidence to the contrary, I find the landlord has established an entitlement to recover the amount claimed of \$1,700.00 for unpaid rent. With respect to the landlord's request for amendments, the Rules of Procedure permit an amendment if the amendment does not prejudice the other party. Since the landlord made this application on May 5, 2010 it is unclear why the landlord did not include unpaid rent of \$100.00 for April and \$1,400.00 for May 2010 at that time. Therefore, I deny the request for amendment and the landlord is at liberty to make another application to request recovery of those amounts and notify the tenant of those claims. I do find the request to include retention of the security deposit does not prejudice the tenant since it is used to offset the amount awarded to the landlord. Therefore, I grant the landlord's request for authorization to retain the security deposit in partial satisfaction of the rent owed to the landlord.

Since the landlord was successful in this application, I award the filing fee to the landlord and provide the landlord with a Monetary Order calculated as follows:

Unpaid rent up to April 1, 2010

\$ 1,700.00

Filing fee	50.00
Less: security deposit retained by landlord	<u>(700.00)</u>
Monetary Order for landlord	\$ 1,050.00

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

Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord has established an entitlement to unpaid rent of \$1,700.00 as claimed and is authorized to retain the tenant's security deposit in partial satisfaction of that amount. The landlord is provided a Monetary Order in the amount of \$1,050.00 to serve upon the tenant. The landlord's request to amend the application to include subsequent loss of rent was denied and the landlord is at liberty to make a subsequent application to claim subsequent damages or loss.

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 09, 2010.

Dispute Resolution Officer