

DECISION

Dispute Codes: **Landlord:** OPR, MNR, MNSD and FF

Tenants: CNR, MNDC, RR and FF

Introduction

These applications were brought by both the landlord and the tenants.

By application of April 27, 2010, the landlord seeks an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by Posting on April 9, 2010.

The landlords also seeks a Monetary Order for the unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed. The landlord's application was originally addressed as a Direct Request proceeding without appearances, but was adjourned to the present participatory hearing as the named landlord differed between the rental agreement and application and there was no bridging documentation.

By application of June 9, 2010, the tenants seek to have the Notice to End Tenancy set aside, a Monetary Order for loss or damage under the legislation or rental agreement, a rent reduction and recovery their filing fee from the landlord.

Issues to be Decided

The landlords' application requires decisions on whether the Notice to End Tenancy should be set aside or upheld, whether the landlord is entitled to a Monetary Order for rent and filing fee and authorization to retain the security deposit in set off.

As the tenant's application is out of time with respect to the Notice to End Tenancy, their application requires a decision only on whether they are entitled to monetary compensation for loss or damage under the *Act*. Such compensation requires evaluation of whether their claims are proven and whether the amounts claimed are reasonable and proven.

Background and Evidence

This tenancy began on July 1, 2008. Rent is \$889 per month and the landlord holds a security deposit of \$440 paid on June 4, 2008.

The landlord gave evidence that the Notice to End Tenancy of April 9, 2010 had been served when the tenants had a rent shortfall of \$75 for February and had paid no rent for March or April of 2010. In the interim, the tenants paid the February and March arrears, but still carry a rent shortfall from April of \$503, and have paid no rent for May or June.

The tenant concurred that these amounts are owing.

In addition to requesting that the Notice to End Tenancy be set aside, the tenant makes claim for monetary compensation of \$1,400 for lost contents of the refrigerator, \$400 for pest control and \$200 for loss of quiet enjoyment.

While the tenant has provided no documentary or corroborating evidence in support of the claims, the landlord has submitted copies of two invoices from pest control companies and seven work orders indicating work completed and pertaining to reports from the tenant.

Analysis

Landlord's Application

Section 26 of the Act states, in part, that:

“(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.”

Section 46 of the Act states that a rent is not paid, a landlord may end the tenancy by issuing a 10-day Notice to End Tenancy on any day after the rent is due. The tenant may nullify the notice by paying the overdue rent or may make application to contest it within five days of receiving it.

In this instance, I find that rent remained unpaid to the time of the hearing and while the tenants have applied to have the notice set aside, they did so nearly two months after receiving it and the application is out of time.

Accordingly, I find that the Notice to End Tenancy is valid and lawful and that the landlords are entitled to an Order of Possession effective at 1 p.m. on July 1, 2010 as agreed between the parties.

I further find that, including recovery of their filing fee and authorization to retain the security deposit in set off the tenants owe the landlords an amount calculated as follows:

April rent shortfall	\$ 503.00
May rent	889.00
June rent	889.00
Filing fee	<u>50.00</u>
Subtotal	\$2,331.00
Less retained security deposit	- 440.00
Less interest (June 4, 2008 to date)	<u>- 3.80</u>
TOTAL	\$1,887.20

Tenants' Application

In the absence of corroborating evidence in support of the tenants' claims, and given that the landlord submitted substantial documentary evidence of having responded in a reasonable time to complaints from the tenants, I am unable to establish that tenants' concerns were not addressed in a timely manner.

The tenants also impeded remedies by requiring that service be performed only when they were home and the issues in question occurred over a long period of time and would have been more reasonably assessed if they had made more timely application.

Therefore, I must find that the tenants' claims are unproven and must be dismissed.

Conclusion

The tenants' application is dismissed in its entirety.

The landlords' copy of this decision is accompanied by:

1. An Order of Possession, enforceable through the Supreme Court of British Columbia, effective at 1 p.m. on July 1, 2010.
2. In addition to authorization to retain the security deposit in set off, a Monetary Order for **\$1,887.20**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

June 23, 2010