

REVIEW HEARING DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlord seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenants' door on March 10, 2010. The landlord also sought a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding.

This matter was originally addressed as a Direct Request proceeding under section 55(4) of the Act on May 10, 2010 on written submissions only. In the result, the Dispute Resolution Officer found in favour of the landlord and issued an Order of Possession effective two days from service and a Monetary Order for \$1,210 including unpaid rent and recovery of the landlord's filing fee.

The tenants applied for a Review Hearing, granted by a Decision made on May 13, 2010. That decision ordered a new participatory hearing under section 82(2)(c) of the Act rather than a reconvening of the original hearing. The decision further ordered that the Decision and orders of May 10, 2010 be suspended pending the present Hearing.

Despite having made the application for this Review Hearing, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

At the commencement of the hearing, the landlord's agent advised that the tenants had vacated the rental unit on or about June 11, 2010 and that an Order of Possession was no longer required.

Issues to be Decided

This application now requires a decision on whether the landlord is entitled to a Monetary Order for unpaid rent and filing fee, and authorization to retain the security deposit in set off.

Background and Evidence

This tenancy began on April 1, 2003. Rent is \$950 per month and the landlord holds a security deposit of \$475 paid on or about April 1, 2003.

During the hearing, the landlord gave evidence that the tenants had given verbal notice at the end of May that they expected to be out of the rental unit by June 15, 2010.

He stated that the Notice to End Tenancy of April 24, 2010 had been served when the tenant had failed to pay the rent for March 2010 and had a rent shortfall of \$220 for April of 2010. He stated that in the interim, the tenants paid the rent for May 2010, but had not paid rent for June.

Analysis

Section 26(1) of the *Act* states that:

“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 67 of the *Act* empowers the director or delegate to determine an amount owed and order that it be paid to a party to a rental agreement due to a loss resulting from the non-compliance of the other.

I find that, including recovery of the filing fee for this proceeding and authorization to retain the security deposit plus interest which I award under section 72(2)(b) in set off against the balance owed, the tenants owe the landlord an amount calculated as follows:

March rent	\$ 950.00
April rent shortfall	220.00
June rent	950.00
Filing fee	<u>50.00</u>
Sub total	\$2,170.00
Less retained security deposit	- 475.00
Less interest (April 1, 2003 to date)	- 16.82
TOTAL	\$1,678.18

Conclusion

Given that the landlord no longer requires an Order of Possession, and that the present Decision varies the Monetary Order of May 10, 2010, I hereby authorize and order that the Decision and Orders of May 10, 2010 are no longer of any force or effect.

In their place, in addition to authorization to retain the security deposit in set off, the landlord is also issued with a Monetary Order for \$1,678.18, enforceable through the Provincial Court of British Columbia, for service on the tenants.

June 25, 2010