

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of rent; and to recover the cost of the filing fee from the Tenants.

I reviewed the evidence provided by the Landlord prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

Monthly rent is \$1,400.00 per month, due the first day of each month. The Tenant paid a security deposit in the amount of \$725.00, as follows: \$225.00 was paid in October, 2009 (for a smaller suite in the same rental property) and an additional security deposit of \$500.00 was paid on February 1, 2010 when the Tenants moved into the rental unit. The \$225.00 security deposit was rolled over into the security deposit for the rental unit, making the total security deposit \$725.00.

On April 24, 2010, the Landlord personally served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"). The Tenants did not pay the outstanding rent or file an application to cancel the Notice within 5 days of being served with the Notice.

The Landlord testified that the Tenants have paid only a fraction of the rent since being served with the Notice. The Landlord requested a monetary order for unpaid rent and loss of rent, as follows:

Total unpaid rent as at May 26, 2010	\$2,400.00
Unpaid rent for June, 2010	\$900.00
Unpaid rent for July, 2010	<u>\$1,400.00</u>
TOTAL AMOUNT CLAIMED	\$4,700.00

The Landlord stated that the Tenants were in arrears for utilities. The Landlord testified that the Tenants were responsible for 1/3 of the utility payments, and had not paid their share of utilities. The Landlord seeks a monetary award of \$600.00 for unpaid utilities.

The Tenant agreed that the amount the Landlord seeks for outstanding rent is correct. The Tenant testified that he had an oral agreement with the Landlord that he could pay the Landlord \$1,000.00 every two weeks until the outstanding rent was paid in full. The

Tenant testified he paid \$800.00, but the Landlord refused to take any more money from the Tenant.

The Tenant testified that there were many deficiencies in the rental unit. The Tenant testified that the Landlord entered the rental unit without permission or notice on many occasions.

Analysis

Based on the testimony of both parties, I accept that the Landlord personally served the Tenants with the Notice on April 24, 2010, 2010. The Tenants did not pay the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on May 4, 2010. The Landlord is entitled to an Order of Possession and I make that Order.

The Landlord has not provided sufficient evidence with respect to his claim for unpaid utilities (i.e. copies of utility bills to substantiate the amount claimed). Therefore this portion of his application is dismissed.

Based on the testimony of both parties, the Landlord has established a monetary claim for unpaid rent to and including May 26, 2010, and loss of rent for the months of June and July, 2010, in the total amount of \$4,700.00.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary claim. No interest has accrued on the security deposit.

The Landlord has been successful in its application and is entitled to recover the cost of the \$50.00 filing fee from the Tenants.

The Landlord has established a monetary claim as follows:

Un paid rent and loss of rent	\$4,700.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$4,750.00
Less security deposit	<u>- \$725.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$4,025.00

Conclusion

I hereby grant the Landlord an Order of Possession effective 2 days after service of the Order upon the Tenants. This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby grant the Landlord a Monetary Order in the amount of \$4,025.00 against the Tenants. This Order must be served on the Tenants and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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: July 14, 2010.

Dispute Resolution Officer