

DECISION

Dispute Codes:

Landlord: OPR, MNR, MNSD and FF
Tenant: CNR

Introduction

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

By application of July 12, 2010, the landlord seeks an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on June 4, 2010 and pursuant to a Notice to End Tenancy given by the tenants on June 2, 2010. The landlord also seeks a Monetary Order for unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the security and pet damage deposits in set off against the balance owed.

By application of June 11, 2010, the tenants sought to have the Notice to End Tenancy for unpaid rent set aside on the grounds of a dispute over payments for their duties as part time assistant park managers.

Despite having brought application, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, their application is dismissed without leave to reapply and the hearing proceeded on the landlord's application in the tenants' absence.

Issues to be Decided

The landlords' application requires decisions on whether the landlord is entitled to an Order of Possession and to a Monetary Order for unpaid rent and filing fee and authorization to retain the security and pet damage deposits in set off.

Background and Evidence

This tenancy began on July 1, 2009. Rent is \$950 per month and the landlord holds a security deposit of \$475 and pet damage deposit of \$25 paid on or about July 1, 2009. While the tenants were also employed by the landlord, the rental agreement and contract for service and the accounts for each were separate.

As a matter of note, while she did not agree to the to the tenants' claim on the contract for services, the landlord stated she had paid the contested amount as an act of good faith.

The landlord gave evidence that the Notice to End Tenancy had been served as a result of the tenants having carried a rent shortfall throughout the tenancy. While the tenants had already submitted their own notice to end the tenancy, the landlord had filed to secure a Monetary Order and to ensure possession of the rental unit. She stated that, despite the tenant's notice effective June 30, 2010, they did not appear to have fully vacated the rental unit at the time of the July 22, 2010 hearing.

The landlord submitted a statement of the tenant's account detailing monthly payments and outstanding balance from January 1, 2010 to June 1, 2010 of \$1,192.52. In addition, the landlord states that the tenants paid no rent for July, 2010.

Analysis

Section 46 of the Act states that if 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 within five days of receipt of the Notice. In this instance, I find that the rent remained unpaid to the time of the hearing.

With respect to the tenants' notice, Residential Policy Guideline 11 – 1 states that, "A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy."

Accordingly, I find that the landlord is entitled to an Order of Possession effective two days from service of it on the tenants.

I further find that, including recovery of the filing fee and authorization to retain the security and pet damage deposit in set off, which I award under section 72 of the *Act*, the tenants owes the landlord an amount calculated as follows:

| | |
|--|-------------------|
| Accumulated arrears to June 1, 2010 | \$1,192.50 |
| July rent | 950.00 |
| Late fee | 20.00 |
| Filing fee | 50.00 |
| Subtotal | \$2,212.50 |
| Less retained security & pet damage deposits (no interest due) | - 500.00 |
| TOTAL | \$1,712.50 |

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlords' copy of this decision is accompanied by:

1. An Order of Possession, enforceable through the Supreme Court of British Columbia, effective two days from service of it on the tenants.
2. In addition to authorization to retain the security and pet damage deposits in set off, a Monetary Order for \$1,712.50, enforceable through the Provincial Court of British Columbia, for service on the tenants.

July 22, 2010