

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, CNR, FF

Introduction

This hearing dealt with applications by both the landlord and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The tenant applied for the following:

- a cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46; and
- recovery of the filing fee for this application from the landlord pursuant to section 72.

The landlord applied for the following:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent, money owed or compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- recovery of the tenants' security deposit in partial satisfaction of the monetary order pursuant to section 38; and
- recovery of the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The parties agreed that the landlord's agent gave the landlords' 10 Day Notice to End Tenancy for Unpaid Rent to the tenant on July 3, 2010. The male landlord (the landlord) confirmed that he received the tenants' June 22, 2010 application for dispute resolution. I am satisfied that the landlords' notice to end tenancy and the tenants' application for dispute resolution were duly served in accordance with the *Act*.

The landlords' agent testified that he sent the tenants the landlords' application for dispute resolution by registered mail on July 26, 2010. He provided the Canada Post Tracking Numbers for the mailing of registered letters to both tenants. The male tenant who appeared at the hearing (the tenant) testified that he did not pick up the landlords'

registered letter containing the application for dispute resolution. However, he confirmed that he knew before the hearing that the landlords would be asking for a monetary award for unpaid rent. In accordance with the *Act*, the landlords' registered letters were deemed served to the tenants five days after their mailing. I am satisfied that the landlords served the tenants with the landlords' application for dispute resolution pursuant to the *Act*.

Issues(s) to be Decided

Are the tenants entitled to the cancellation of the landlords' notice to end tenancy? Are the tenants entitled to recover their filing fee for this application from the landlords?

Are the landlords entitled to an Order of Possession? Are the landlords entitled to a monetary order for unpaid rent and loss incurred by the landlords? Are the landlords entitled to retain all or a portion of the tenants' security deposit to partially recover the monetary order requested by the landlords? Are the landlords entitled to recover their filing fee for their application from the tenants?

Background and Evidence

The landlord's agent testified that the tenant signed a fixed tenancy agreement on December 22, 2009 for lease of the rental premises until March 31, 2010. Under the terms of the tenancy agreement entered into evidence, the tenant was to pay a pro-rated amount of rent for five days in December 2009 and monthly rent of \$1,350.00 per month for January, February and March 2010. The landlord testified that the rent changed to \$1,450.00 per month on April 1, 2010.

The landlord's agent said that the tenants did not pay their March 2010 rent, but paid \$1,450.00 in rent for April, May and June 2010. The landlord said that the tenants have not paid any rent for July or August 2010.

The tenant confirmed the above payment record. The tenant maintained that he performed work on the property for the landlord's agent when the agent owned the property. The landlord's agent confirmed that he sold the property to the landlord, who is his brother-in-law. The landlord and his agent provided undisputed testimony that the work conducted by the tenant was by way of a contract with the agent and pre-dated the landlords' purchase of the property.

The tenant did not submit evidence regarding the terms of any contract he may have had to perform this work, nor did he dispute the landlords' evidence that this work was done before the landlord purchased the property and before the tenant commenced leasing the property.

The landlords' agent testified that the tenants did not pay a security deposit, although the landlords' application seeks recovery of \$725.00 for the tenants' security deposit. The landlord's agent testified that the following "concessions" were included in the tenancy agreement because the landlord's agent knew the male tenant and wanted to assist him over a difficult time.

- to let the tenant occupy the premises for ten days in December 2009 and only pay rent for five of these days;
- to reduce the tenant's rent from \$1,450.00 per month to \$1,350.00 for the first three months; and
- to allow the tenant to occupy the rental premises without paying a security deposit.

When the tenant did not pay rent for March 2010, the landlord's agent asserted that the landlord was allowed to remove these "concessions" from the tenancy agreement. The landlord has included in his application recovery of each of the "concession" items outlined above.

The landlord's agent asked for recovery of the following items in his application for a monetary order:

Item	Amount
Unpaid March 2010 Rent	\$1,350.00
Unpaid July 2010 Rent	1,450.00
Unpaid August 2010 Rent	1,450.00
Unpaid Security Deposit	725.00
Return of Concession Rents - January to March 2010 (3 months @ \$100.00 each)	300.00
Extra 5 Days Rent December 2009	200.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$5,525.00

The landlords' agent also requested an allowance for his fees and the fees for preparing this application for dispute resolution.

The landlord also requested that the Order of Possession for Unpaid Rent be made effective as soon as possible.

Analysis

Order of Possession

I am satisfied that the landlords served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent on July 3, 2010. The tenant confirmed that the tenants had not paid rent for March and July 2010 by that date. Since then, the tenants have not paid rent for August 2010.

The tenants have provided insufficient evidence to demonstrate that the landlord entered into a tenancy agreement with them that allowed the tenants to perform work for the landlord in lieu of monthly rental payments. Any contractual arrangement that the tenant may have had with the landlord's agent, the previous owner of the property, pre-dated this tenancy.

I find no basis to cancel the landlords' July 3, 2010 10 Day Notice for Unpaid Rent. I grant the landlords a 2 day Order of Possession. I am attaching an Order of Possession which must be served on the tenants.

Landlords' Application for a Monetary Order

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant, in this case the landlord, must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the landlords' evidence that there is unpaid rent for the month of March 2010 (\$1,350.00), July (\$1,450.00) and August 2010 (\$1,450.00) that should be included in a monetary order in the landlords' favour.

I do not accept the landlords' assertion that this monetary order should include revisions to the concessions included in the tenancy agreement submitted into evidence. For that reason, I reject the landlord's request to obtain allowances for any other expenses including:

- concession rents of \$100.00 for three months;
- a revision of the December 2009 rent; and
- a security deposit that was not required in the tenancy agreement.

As the landlord's agent testified that no security deposit was paid by the tenants, I dismiss the landlord's application to be allowed to retain the security deposit in partial satisfaction of the monetary order. Since the landlords have been successful in their application, I include the recovery of their filing fee for this application in their monetary order.

Conclusion

I dismiss the tenants' application for cancellation of the notice to end tenancy and grant the landlord a 2 Day Order of Possession. If these premises are not vacated within the two days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I grant a monetary order in the landlord's favour in the following terms.

Item	Amount
Unpaid March 2010 Rent	\$1,350.00
Unpaid July 2010 Rent	\$1,450.00
Unpaid August 2010 Rent	\$1,450.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$4,300.00

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.