

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing. The landlord attended the hearing and was given an opportunity to be heard, to present evidence and to make submissions. The landlord testified that she posted the notice to end tenancy on the tenants' door on July 3, 2010. She said that she handed Tenant CK a copy of the application for dispute resolution on July 14, 2010. I am satisfied that the notice to end tenancy and the application for dispute resolution were served to the tenants in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary order for unpaid rent? Is the landlord entitled to retain the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover her filing fee for this application from the tenants?

Background and Evidence

The landlord testified that this tenancy commenced on February 1, 2007. At the end of the original one-year fixed term tenancy, the tenants' rental of the premises converted to a month-to-month tenancy. She said that the tenants were paying \$855.00 in monthly rent as of February 2010, payable on the first of each month. She said that she continues to hold \$800.00 from the tenants' pet damage and security deposits.

The landlord said that she issued the July 3, 2010 notice to end tenancy when she did not receive all of the tenants' rent payment on July 1, 2010. She said that she did receive a cheque for \$455.00, but \$400.00 in rent and a \$25.00 late rent payment fee remained owing as of July 2, 2010. She said that she did not receive the remainder of the tenants' July 2010 rent during that month. She did accept two cheques of \$427.50 each in August 2010 on a use and occupancy basis only. Thus far in September 2010, she has received a single cheque for \$427.50 for use and occupancy to be applied to the tenants' rent. She asked for a monetary order in the amount of \$902.50 to cover the outstanding rent owing from July 2010 and the unpaid half of the tenants' September 2010 rent. She also asked for an Order of Possession.

Analysis

Order of Possession

Within five days of receiving the Notice to End Tenancy, the tenants failed to pay the remainder of their July 2010 rent and did not make an application pursuant to section 46(4) of the *Act*. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of his tenancy and required the tenants to vacate the premises by July 17, 2010. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Monetary Order for Rental Arrears

I find that the landlord is entitled to receive an order for unpaid rent for July and September 2010. I issue the attached monetary order that includes the landlord's application for \$902.50 in unpaid rent for this period.

The landlord testified that she continues to hold the tenants' security and pet damage deposits plus interest. I allow the landlord to retain these deposits plus interest in partial

satisfaction of the monetary award. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenants. I make a monetary Order in favour of the landlord as follows:

Rental Arrears and Late Fee for July 2010	\$425.00
Rental Arrears for September 2010	427.50
Less Security Deposit and Interest from January 11, 2007 to date of decision (\$400.00 plus \$11.92 interest = \$411.92)	-411.92
Less Pet Damage Deposit and Interest from January 19, 2007 to date of decision (\$400.00 plus \$11.79 interest = \$411.79)	-411.79
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$78.79

I allow the landlord to retain the tenants' pet damage and security deposits in partial satisfaction of the monetary award and to recover her filing fee for this application.

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*.