

DECISION

Dispute Codes OPR, OPC, MNR, FF, CNC, CNR, MNDC, OLC, RR, O

Introduction

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

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- cancellation of the landlord's One Month Notice to End Tenancy for Cause pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a reduction in their rent for repairs, services or facilities agreed upon but not provided, pursuant to section 33;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72; and
- other measures to be taken.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he witnessed one of his representatives post a One Month Notice to End Tenancy for Cause on the tenants' door on August 3, 2010 and a 10 Day Notice to End Tenancy for Unpaid Rent on the tenants' door on August 5, 2010. The male tenant (the tenant) confirmed receiving these notices. The landlord testified that his representative sent each of the

two tenants a copy of his application for dispute resolution package on August 17, 2010 by registered mail. He provided Canada Post tracking numbers for the mailing of these letters. The tenant testified that neither he nor the other tenant received these packages. The tenant testified that he handed the tenants' application for dispute resolution package to the landlord's representative on August 10, 2010. I am satisfied that all of these documents and applications were served in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession? Are the tenants or the landlord entitled to monetary orders? Are the tenants entitled to an order requiring the landlord to comply with the *Act*? Are the tenants entitled to a reduction in their rent for services or facilities agreed upon but not provided by the landlord? Are the tenants or the landlord entitled to recover their filing fees for their applications?

Background and Evidence

The landlord testified that the tenants commenced this month-to-month tenancy on April 10, 2010. Rent of \$940.00 was payable on the first of each month. The landlord testified that he continues to hold the tenants' \$470.00 security deposit plus interest paid on April 15, 2010.

The landlord testified that the tenants' June rent cheque could not be cashed. He said that they paid the June 2010 rent in July. Due to a series of problems with this tenancy, the landlord said that he issued a One Month Notice to End Tenancy for Cause to the tenants on August 3, 2010. When the tenants' August rent cheque could not be negotiated at the bank, he issued the tenants a 10 Day Notice to End Tenancy for Unpaid Rent. He said that the tenants' September rent cheque could not be negotiated at the bank and provided undisputed testimony that the tenants have not paid rent for either August or September 2010.

The landlord testified that the tenants signed a provision in Section 3 of their tenancy agreement allowing the landlord to charge \$50.00 for each N.S.F. cheque issued for

their monthly rental payment. The landlord said that he was only interested in obtaining an Order of Possession for the rental premises and recovery of the unpaid rent relating to August 2010 at this stage.

The tenants applied for dispute resolution regarding both of the notices to end tenancy within the time frame for doing so. The tenant said that the landlord's representative had been very unreasonable in his interactions with the tenants.

Analysis

Order of Possession

The tenant did not dispute the landlord's evidence that the tenants failed to pay their outstanding rent within five days of receiving the 10 Day Notice to End Tenancy. However, the tenants made an application for dispute resolution pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. The tenant confirmed that the tenants had placed stop payments on the rent cheques for August and September 2010. He said that they did so to try to obtain commitments from the landlord's representative to provide the services and facilities required under the lease. He testified that the tenants were planning to vacate the premises in the next few days.

There are mechanisms in the *Act* that enable tenants to seek reductions in rent for services or facilities not provided by the landlord. However, withholding monthly rent without an order from a Dispute Resolution Officer enables a landlord to issue a 10 Day Notice to End Tenancy for Unpaid Rent. The tenant provided insufficient evidence to cancel the landlord's 10 Day Notice to End Tenancy.

I dismiss the tenant's application to cancel the 10 Day Notice to End Tenancy. I grant the landlord a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Since I issue the landlord an Order of Possession for his 10 Day Notice to End Tenancy, I dismiss the parties' applications relating to the One Month Notice to End Tenancy for Cause. As this tenancy is ending, I dismiss the tenant's applications relating to rent reductions and the request that the landlord comply with the *Act*.

Applications for Monetary Orders

I grant the landlord his requested application for a monetary order of \$940.00 for unpaid rent for August 2010. I add the \$50.00 fee for the N.S.F. cheque for August 2010, as established in section 3 of the signed tenancy agreement. Although the landlord's application does not seek to retain the tenants' security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award. As the landlord's application has been successful, I allow the landlord to recover his \$50.00 filing fee for his application. I dismiss the tenants' application for a monetary order as they provided insufficient evidence to support their request.

Conclusion

I grant the landlord a 2 Day Order of Possession. I grant the landlord a monetary order as set out below.

Item	Amount
Unpaid August 2010 Rent	\$940.00
NSF Cheque Fee – August 2010	50.00
Less Security Deposit	-475.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$565.00

I dismiss the tenants' applications:

- to cancel the notices to end tenancy;
- to seek a rent reduction from the landlord;
- to seek the landlord's compliance with the *Act*, and
- to seek a monetary order from the landlord.

As the tenants' application has been unsuccessful, I do not allow them to recover the filing fee for their application from the landlord.

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) 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*.