

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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 and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant 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 landlord testified that she posted a 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door on July 6, 2010. The landlord testified that she sent the tenant(s) a copy of her application for dispute resolution by registered mail on August 12, 2010. Both parties who received these notices confirmed receiving the landlord's application for dispute resolution. I am satisfied that the landlord has served these documents in accordance with the *Act*.

At the hearing, the tenant's representative noted that the tenant's name was as shown above and not the reversal of that name provided in the landlord's original documents. I revised his name accordingly with agreement from the parties. The tenant stated that the former joint tenant who lived at the rental premises vacated the rental unit several months earlier and is not responsible for any of the unpaid rent that is central to the landlord's application. With the agreement of the parties, I have revised the landlord's application to reflect that there is no longer a female tenant in this tenancy.

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 a portion of the tenant's security deposit in partial satisfaction of the monetary Order requested? Is the landlord entitled to recover her filing fee for this application?

Background and Evidence

The parties testified that this month-to-month tenancy commenced on August 1, 1997. Monthly rent until October 1, 2010 is set at \$877.49 for the premises and \$15.00 for parking, payable on the first of the month. As of October 1, 2010, the rent is scheduled to increase to \$905.56 plus \$15.00 for parking. The landlord continues to hold a \$345.00 security deposit plus interest for this tenancy paid on July 27, 1997.

The landlord testified that the tenant did not pay the \$742.49 owing on July 1, 2010. She said that the tenant made no rent payments during July 2010. She testified that since that time, the tenant paid \$250.00 on August 3, 2010, \$331.00 on August 11, 2010, \$300.00 on August 25, 2010, and \$500.00 on September 23, 2010. The landlord testified that she accepted the tenant's payments for use and occupancy only. She provided undisputed testimony that the tenant owed \$1,146.47 at the time of this hearing. She also noted that the tenant will owe an additional \$905.56 plus \$15.00 for parking on October 1, 2010. She requested that the monetary Order allow the landlord to retain the security deposit plus interest and recover the filing fee for the landlord's application from the tenant. She asked for an Order of Possession to take effect by October 15, 2010, although she said that she may reconsider acting on this Order if the tenant pays all of the rent owing by that date.

The tenant testified that he knows that he owes rent and that he is trying to get caught up in his rent payments such that he can continue this tenancy. He said that he believed that the landlord had abandoned her efforts to have him evicted for unpaid rent when she accepted his rent payments in August 2010. The landlord said that she did

not pursue a second notice to end tenancy for August because he failed to pay his unpaid rent for July 2010 within five days of being served her July 6, 2010 notice.

Analysis

Order of Possession

The tenant failed to pay \$742.49 in rent owing for July 2010 rent within five days of being served the 10 Day Notice to End Tenancy on July 6, 2010. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving that 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice, July 19, 2010. As the tenant remains in the rental unit, I find that the landlord is entitled to an Order of Possession to take effect by one o'clock in the afternoon on October 15, 2010. 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 by then, the landlord may enforce this Order in the Supreme Court of British Columbia.

Monetary Order for Rental Arrears

Based on the undisputed testimony provided by the landlord, I find that the landlord is entitled to receive a monetary award for outstanding rent owing in the amount of \$1,146.47. To this amount, I add an award of \$920.56 for rent and parking due on October 1, 2010, as there seems little likelihood that the landlord will be able to rent the premises to anyone else for October 2010. I authorize the landlord to retain the tenant's security deposit plus interest from July 27, 1997 until the date of this decision. I also allow the landlord to recover her filing fee for this application from the tenant.

Conclusion

I issue the landlord a formal copy of an Order of Possession effective by one o'clock in the afternoon on October 15, 2010. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue the landlord a monetary Order in the following terms:

| Item | Amount |
|---|-------------------|
| Unpaid Rent owing as of September 30, 2010 | \$1,146.47 |
| October 2010 Rent and Parking Owing | 920.56 |
| Less Security Deposit plus interest (\$345.00 + \$44.96 = \$389.96) | -389.96 |
| Recovery of Filing Fee for this application | 50.00 |
| Total Monetary Order | \$1,727.07 |

This monetary Order allows the landlord to retain the tenant's security deposit plus interest and recover her filing fee for this application from the tenant.

The landlord is provided with formal monetary Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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*.