

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF, SS, O

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 tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing. The landlords attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. They testified that they posted a 10 Day Notice to End Tenancy for Unpaid Rent on the tenants' door on July 28, 2010 and sent a copy of this notice by registered mail that day. They testified that they sent the tenants a copy of their application for dispute resolution hearing package by registered mail on August 14, 2010. They provided Canada Post Tracking Numbers to confirm this mailing. I am satisfied that the landlord has served the application for dispute resolution to the tenants in accordance with the *Act*.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to a monetary Order for unpaid rent and loss under the *Act*? Are the landlords entitled to recover their filing fee from the tenants?

Background and Evidence

The landlords testified that they first rented these rental premises to two different tenants, HM and RL, on September 26, 2009. On February 1, 2010, tenants HM and

RL paid a security deposit of \$700.00. Tenants HM and RL subsequently sublet the rental premises to the present tenants, DL (RL's brother) and TD. They testified that JM and RL did not leave them with a forwarding address in writing and did not obtain approval to sublet the premises to RL's brother and TD. The only evidence that the landlords provided to demonstrate that DL and TD are tenants is their application for tenancy. DL and TD never signed a tenancy agreement with the landlords.

The landlords requested an Order of Possession as they have not received rent from the tenants from July 2010 through October 2010. They requested a monetary award in the amount of \$5,600.00 from DL and TD, permission to retain the security deposit held for this tenancy, and authorization to recover their filing fee for this application.

Analysis

Order of Possession

The tenants failed to pay the July 2010 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the Notice. In accordance with section 46(5), the tenants' failure to take either of these actions within five days led to the end of their tenancy and required them to vacate the premises by August 1, 2010. As that has not occurred, I find that the landlords are entitled to a 2 day Order of Possession. The landlords 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 landlords may enforce this Order in the Supreme Court of British Columbia.

Monetary Order for Rental Arrears

Residential Tenancy Policy Guideline #19 specifies that "the sub-tenant does not take on any rights or obligations of the original tenancy agreement that are not contained in the sub-agreement, and the original lessee remains the tenant of the original lessor, and is the landlord of the sub-tenant." The only signed documentation in place for this tenancy is with tenants HM and RL who signed the original tenancy agreement. Based on the evidence presented, I am not satisfied to the extent necessary to issue the

landlords a monetary Order against tenants DL and TD. As I am not satisfied that there is any tenancy agreement in place with DL and TD, I dismiss the landlords' application for a monetary Order against them with leave to reapply.

Security Deposit and Filing Fee

As there are rental arrears owing from this tenancy, I allow the landlords to retain the \$700.00 security deposit plus interest they retain for this tenancy. No interest is payable over this period. As the landlords have been partially successful in their application, I allow them to recover their filing fee for their application from tenants DL and TD.

Conclusion

I provide the landlords with a formal copy of an Order of Possession to take effect within 2 days of the landlords' service of this notice to the tenant(s). 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 dismiss the landlords' application for a monetary Order for unpaid rent from these tenants. I allow the landlords to retain the security deposit from this tenancy in partial satisfaction of unpaid rent from this tenancy. I grant the landlords a monetary Order in the amount of \$50.00 from the tenants to recover the landlords' filing fees.

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*.