

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 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 he posted a 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door on August 2, 2010. He said that his daughter handed the tenant a copy of his application for dispute resolution on August 23, 2010. The tenant said that she received both of these documents. I am satisfied that the landlord served these documents to the tenant 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 or compensation for loss under the *Act*? Is the landlord entitled to retain all or a portion of the tenant's security and pet damage deposits in satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This six-month fixed term tenancy commenced on May 1, 2010. Monthly rent is set at \$695.00 and a monthly parking charge of \$10.00 is also applied to the tenant. These

payments are due on the first of each month. The landlord said that he continues to hold the tenant's \$347.50 security deposit paid on April 13, 2010 and the tenant's \$200.00 pet damage deposit paid on May 3, 2010.

At the commencement of the hearing, the landlord said that he had discussed the application with the tenant and that he was revising his application for dispute resolution because the tenant had paid most of the \$2,169.00 requested in his application for a monetary Order. He said that he was now seeking a monetary Order of \$349.00. The tenant said that she agreed to pay the outstanding \$349.00 by Friday, October 8, 2010. Although the landlord said that he was still seeking an Order of Possession, he testified that he would only act on this Order of Possession if the tenant did not pay the \$349.00 owing by the end of the day on Saturday, October 9, 2010.

The landlord entered undisputed testimony that the tenant did not pay any of the outstanding August rent owing within five days of being served his 10 Day Notice to End Tenancy. The tenant testified that neither of her August 2010 rent payments were made within the five day period following her receipt of the landlord's notice. The landlord testified that he accepted payments in August 2010 and on seven different days between September 1, 2010 and October 2, 2010, for use and occupancy only.

Analysis

Pursuant to Section 63 of the *Residential Tenancy Act*, the Dispute Resolution Officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute. The tenant agreed to pay the landlord the remaining \$349.00 in outstanding rent before the end of the day on Saturday, October 9, 2010. The parties agreed that the landlord would receive a

monetary Order in that amount to be exercised if the tenant did not pay the outstanding rent owing. The tenant did not dispute the landlord's request for a 2 Day Order of Possession based on her failure to pay the outstanding rent owing for August 2010 within five days of being served notice of the landlord's notice. The parties agreed that the landlord would only serve the 2 Day Order of Possession he is entitled to receive if the tenant does not pay the \$349.00 in outstanding rent by the end of the day on Saturday, October 9, 2010.

I issue a 2 Day Order of Possession to the landlord which the landlord said he would only exercise if the tenant does not comply with her agreement to pay her outstanding rent by the end of the day on October 9, 2010.

In accordance with the agreement reached by the parties, I issue a monetary Order in the landlord's favour in the amount of \$349.00. I dismiss the landlord's application to retain a portion of the tenant's security deposit to partially recover the monetary award requested. As the parties agreed that the tenant has already compensated the landlord for the filing fee for this application, I make no order regarding recovery of the landlord's filing fee.

Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within two days of the landlord's service of this notice to the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I make a monetary Order in the landlord's favour in the amount of \$349.00. The landlord is provided with formal copies of 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.

I dismiss the landlord's application to retain a portion of the tenant's security deposit. I make no order regarding the cost of filing this application.

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*.