



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlords' application for an Order of Possession for unpaid rent and a Monetary Order for damage to the rental unit, unpaid rent; damage or loss under the Act, regulations or tenancy agreement; authorization to retain the security deposit; and, recovery of the filing fee. The tenants did not appear at the hearing. The landlords testified that each of the tenants were personally served with the hearing documents within three days of making this application. Having been satisfied the tenants were sufficiently served I proceeded to hear from the landlords without the tenants present.

Issues(s) to be Decided

1. Are the landlords entitled to an Order of Possession?
2. Are the landlords entitled to recover unpaid rent and loss of rent?
3. Have the landlords established an entitlement to compensation for damage to the rental unit?
4. Is the landlord authorized to retain the security deposit?

Background and Evidence

The landlords provided the following testimony. The tenancy commenced August 1, 2010. There is no written tenancy agreement; however, the landlord completed a Shelter Information document for the Ministry. Pursuant to the verbal tenancy agreement, the tenants are required to pay rent of \$700.00 on the 1st day of every

month. The landlords received security deposits of \$175.00 and \$162.00 from income assistance on behalf of the tenants. For the month of September 2010 the landlords received one-half of the rent from income assistance but did not receive the other half from the tenants. The landlord personally served a 10 Day Notice to End Tenancy upon the tenants on September 3, 2010 indicating rent of \$350.00 was outstanding as of September 1, 2010. The landlords did not receive the outstanding rent and the tenants did not dispute the Notice after the Notice was served. The landlord received \$350.00 from income assistance for the month of October 2010.

The landlords testified the tenants continue to reside in the rental unit and have brought a large amount of garbage onto the property. In making this application the landlord is seeking monetary compensation of \$300.00 for damage, \$700.00 for security and pet deposits, as well as the unpaid rent.

As documentary evidence, the landlords provided a copy of the 10 Day Notice.

Analysis

Where a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent or dispute the Notice. Otherwise, the tenant is conclusively presumed to have accepted the Notice and must vacate the rental unit by the effective date. Based upon the landlords' undisputed testimony I find the landlords served the tenants with a 10 Day Notice and the tenants did not pay the outstanding rent or dispute the Notice. Accordingly, I find the tenancy ended September 13, 2010.

Since the tenants continue to occupy the rental unit the landlords are entitled to an Order of Possession. With this decision I provide the landlords with an Order of Possession effective two days after service of the Order of Possession upon the tenants. The Order of Possession may also be enforced in the Supreme Court of British Columbia as an Order of that court.

I am satisfied that the landlords are entitled to recover unpaid rent of \$350.00 from the tenants for the month of September 2010 and \$350.00 for loss of rent for the month of October 2010.

I find the landlords' claims for damage to be premature as the tenants have not yet vacated the rental unit. The landlords retain the right to make a subsequent application for damage or subsequent losses associated to this tenancy.

As the tenancy has ended I do not order the tenants to pay the remainder of the security deposit or pet deposit to the landlords.

I also award the filing fee to the landlords. The landlords are authorized to retain the tenants' security deposit that has been paid to the landlords in partial satisfaction of the rent owed by the tenants. I provide for the landlord with this decision a Monetary Order calculated as follows:

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|--|------------------|
| Unpaid rent – September 2010 | \$ 350.00 |
| Loss of rent – October 2010 | 350.00 |
| Filing fee | 50.00 |
| Less: security deposit (\$175.00 + 162.00) | <u>(337.00)</u> |
| Monetary Order | <u>\$ 413.00</u> |

The landlords must serve the Monetary Order upon the tenants and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenancy has ended and the landlords have been provided to an Order of Possession effective two (2) days after service upon the tenants. The landlords have

been authorized to retain the tenants' security deposit and are provided a Monetary Order for the balance of \$413.00 to serve upon the tenants. The landlords' claim for damage to the rental unit has been dismissed with leave to reapply.

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*.

Dated: October 19, 2010.

Dispute Resolution Officer