

DECISION

Dispute Codes OPR, MNR, MNSD, 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 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.

At the hearing, the landlord and the male tenant attended. The female tenant who was initially the only tenant/respondent identified in the landlord's application for dispute resolution did not attend. The landlord and male tenant discussed the landlord's application, noting that the landlord had only named the female tenant in the application for an Order of Possession and monetary Order. However, the residential tenancy agreement identified both the male and female tenant as tenants. The landlord asked for permission to revise the application for dispute resolution to add the male tenant's name as a tenant/respondent. The male tenant supported this request. Under the circumstances, I agreed to allow the landlord to add the male tenant's name to the application for dispute resolution as a tenant/respondent. With the male tenant's agreement, I accepted the landlord's request to make a similar revision to the landlord's 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord and the male tenant testified that the male tenant tried to hand the female tenant the 10 Day Notice to End Tenancy for Unpaid Rent to the female tenant on October 28, 2010 at 9:00 p.m. The landlord submitted a written statement from the male tenant who stated that he tried to hand the notice to the female tenant, but she said she was on the phone, so the male tenant placed the notice by her door within the rental unit. The male tenant said that she picked up this notice the following day. The

male tenant confirmed his written statement at the hearing. The landlord said that she handed the application for dispute resolution to the female tenant on November 13, 2010, witnessed by the male tenant. The male tenant testified that he witnessed this personal service of the application. I am satisfied that the landlord served the above documents in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary Order for unpaid rent? Is the landlord entitled to recover the tenants' security deposit in partial satisfaction of the monetary Order requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy commenced September 1, 2009. Both tenants signed the month-to-month tenancy agreement requiring them to pay a total of \$1,190.00 on the first of each month. The tenants paid a security deposit of \$595.00, which the landlord continues to hold.

The landlord testified that the female tenant has not paid her half of the required rent since July 2010. The landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent, requesting the payment of \$1,785.00 in rent owing as of October 26, 2010. Since then, the female tenant gave the landlord one cheque on November 29, 2010 for \$790.00, which she asked to be directed to her December 2010 rent and \$200.00 to be applied to her unpaid portion of the November 2010 rent. The male landlord sent a note to the female tenant on November 30, 2010, advising her that the payment had been applied to the rental arrears which remained outstanding and that the hearing before the Residential Tenancy Branch on December 3, 2010 would clarify and determine her status in the apartment, and not her payment of November 29, 2010.

The landlord requested an end to this joint tenancy, requesting an Order of Possession and a monetary Order for the unpaid rent outstanding. She asked that the monetary Order reflect the payment towards the arrears provided and the unpaid portion of the

December 2010 rent. The landlord and male tenant discussed commencing a new tenancy agreement once the existing joint tenancy is ended. The landlord and male tenant agreed that the landlord should keep the security deposit.

Analysis

Order of Possession

The tenant(s) failed to pay all of the outstanding rent owing within five days of receiving the 10 Day Notice to End Tenancy. The tenant(s) have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of his tenancy requiring the tenant(s) to vacate the premises by November 15, 2010. Based on the way that the landlords accepted the female tenant's November 29, 2010 payment, I find that the landlords alerted the female tenant that her payment had not continued this tenancy and that the status of the tenancy would still need to be determined by the Residential Tenancy Branch.

I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenant(s) does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Monetary Order for Rental Arrears

I find that the landlord is entitled to receive an order for the unpaid portions of rent from August 2010 until November 2010. I find that the landlord is also entitled to a monetary award of \$198.31 for a portion of the December 2010 rent that remains owing. I reduce the monetary award by \$790.00, the amount paid by the female tenant on November 29, 2010. I allow the landlord to retain the tenants' security deposit plus interest to partially satisfy the monetary award issued. I also allow the landlord to recover the filing fee from the tenants.

Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's 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 issue a monetary Order in the landlord's favour which allows the landlord to retain all of the tenants' security deposit and to recover the landlord's filing fees for this application from the tenant(s):

Item	Amount
Unpaid Portion of August 2010 Rent	\$595.00
Unpaid Portion of September 2010 Rent	595.00
Unpaid Portion of October 2010 Rent	595.00
Unpaid Portion of November 2010 Rent	595.00
Unpaid Portion of December 2010 Rent	198.31
Less Female Tenant's November 29, 2010 Payment	-790.00
Less Security Deposit	-595.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,243.31

The landlord is provided with 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. 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*.