

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 the tenant's pet damage and security deposits 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 November 17, 2010. Her witness confirmed that she attended the landlord's posting of this notice. The tenant confirmed that the notice was posted on his door on November 17. The landlord testified that she sent the tenant her evidence and a copy of her application for dispute resolution by registered mail on December 2, 2010. The tenant confirmed receiving the landlord's evidence and application for dispute resolution. 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 award for unpaid rent and loss arising out of this tenancy? Is the landlord entitled to retain the tenant's security and pet damage deposits in partial satisfaction of the monetary award requested? Is the landlord entitled to recover her filing fee for this application from the tenant?

Background and Evidence

This tenancy commenced on February 1, 2007 and is now a month-to-month tenancy. Monthly rent is currently set at \$1,760.00, payable on the first of each month. The tenant paid a security deposit of \$825.00 and a pet damage deposit of \$250.00 on January 7, 2007. The landlord continues to hold these deposits.

The landlord's initial application for a monetary award of \$3,520.00 was for unpaid rent of \$1,760.00 for each of November and December 2010 plus recovery of her filing fee for this application. She accepted the tenant's payment of \$500.00 on November 28, 2010 for use and occupancy only. At the hearing, the landlord asked to increase her application for a monetary award to include a monetary award for January 2011 rent.

Analysis

Order of Possession

The tenant failed to pay all of the \$1,760.00 amount owing for November 2010 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has 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 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. In this case, this required the tenant to vacate the premises by November 27, 2010. As that has not occurred, 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. If the tenant 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 a monetary award for unpaid rent of \$1,260.00 for November 2010 and \$1,760.00 for December 2010. I have included these amounts in the attached monetary Order.

Since the January 2011 rent is not yet owing and it remains to be seen whether the landlord can mitigate the tenant's losses for January 2011 by re-renting the premises to another tenant, I make no monetary award for January 2011. I allow the landlord leave to reapply for rental losses she may incur for January 2011.

I allow the landlord's application to retain the pet damage and security deposits in partial satisfaction of the monetary award she is receiving plus interest. As the landlord has been successful in her application, I allow her to recover her filing fee for this application from the tenant.

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 in the following terms which allows her a monetary award for unpaid rent and recovery of her filing fee, and authorizes her to retain the pet damage and security deposits in partial satisfaction of this award:

Item	Amount
Unpaid Portion of November 2010 Rent	\$1,260.00
Unpaid December 2010 Rent	1,760.00
Less Security Deposit plus Interest (\$825.00 + \$24.72 = \$849.72)	-849.72
Less Pet Damage Deposit plus Interest (\$250.00 + \$7.49 = \$257.49)	-257.49
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,962.79

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.

The landlord remains at liberty to reapply for loss of rent she may encounter for January 2011.

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*.