

DECISION

Dispute Codes: **Landlord:** OPR, MNR, MNDC and FF
Tenants: CNR, and FF

Introduction

These applications were brought by both the landlord and the tenant.

By application received October 13, 2010, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on October 5, 2010. The landlord also sought a Monetary Order for the unpaid rent, unpaid utilities, loss or damage under the legislation or rental agreement and recovery of the filing fee for this proceeding.

By earlier application received on October 12, 2010, the tenants seek to have the Notice to End Tenancy set aside and recovery of the filing fee for this proceeding.

At the commencement of the hearing, the parties advised that the tenants had vacated the rental unit at the end of October and the landlord no longer required an Order of Possession.

Issues to be Decided

This matter now requires a decision on whether the landlord is entitled to a Monetary Order for the unpaid rent and utilities and damage or loss.

Background and Evidence

This tenancy ran from November 13, 2009 to October 31, 2010. Rent was \$840 per month and the landlord holds a security deposit of \$430 paid on November 13, 2009.

The instigating factor in this dispute appears to have occurred when the landlord gave the tenants verbal notice to end the tenancy on September 8, 2010.

The landlord stated that he had asked the tenant's to leave because of disturbance in the rental unit.

The tenant stated that the verbal notice had been given for landlord use as he had stated his son needed to move in to the rental unit.

In either case, the notice would have been unenforceable as it had not been served in writing and on the prescribed form as required under sections 47 and 49 of the *Act*. In any event, the tenant concurred that the October rent was not paid on the assumption that the notice was for landlord use.

In consequence, the landlord served the tenants with a 10-day Notice to End Tenancy for the unpaid rent on October 5, 2010 setting an end of tenancy date of October 15, 2010.

Analysis

Section 26(1) of the *Act* provides that:

“A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.”

In the absence of a properly served Notice to End Tenancy for landlord use, I find that the tenants had no right under the *Act* to withhold the October rent and the landlord acted properly in serving the Notice to End Tenancy for unpaid rent of October 5, 2010.

In addition, the tenant agreed to the landlord's claim for \$94 in unpaid utilities even though he had provided no documentary evidence in support of the claim.

The tenant did not agree to the landlord's claim for an additional \$60 in unpaid utilities and, in the absence of supporting documentary evidence, that part of the claim is dismissed.

Therefore, I find that the landlord is entitled to a Monetary Order for the unpaid rent and utilities and, as authorized under section 72 of the *Act*, I hereby authorize and order that he may retain the tenant's security deposit in set off against the balance owed.

The landlord attempted to introduce claims for damage or loss under the legislation or rental agreement (loss of rent) and damage to the rental unit. The landlord was directed to address those matters by way of a separate application as it is not yet known when he will find new tenants and he had not made claim or submitted evidence for damages in the present application.

I decline to award the filing fee to either party as I find both contributed to the creation of this dispute; the tenants by failing to pay rent and the landlord by issuing a verbal notice to end tenancy.

Thus, I find that the tenants owe the landlord an amount calculated as follows:

October rent	\$840.00
Unpaid utilities	<u>94.00</u>
Sub total	\$934.00
Less retained security deposit (No interest due)	- <u>430.00</u>
TOTAL	\$504.00

Conclusion

The landlord's copy of this decision is accompanied by a Monetary Order for \$504.00, enforceable through the Provincial Court of British Columbia, for service on the tenants.

November 9, 2010