

DECISION

Dispute Codes OPR, MNR, 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; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenant did not attend this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. She entered into written evidence a copy of the witnessed 10 Day Notice to End Tenancy for Unpaid Rent posted on the tenants' door on December 5, 2010. She testified that she sent the tenant a copy of her application for dispute resolution hearing package by registered mail on December 19, 2010. She provided a Canada Post Tracking Number to confirm this mailing. I am satisfied that the landlord has served these 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 award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This periodic tenancy commenced on March 1, 2010. Monthly rent was set at \$875.00. The landlord holds the tenants' \$380.00 security deposit paid on October 1, 2008.

The landlord testified that the tenants have not paid any portion of the \$875.00 in unpaid rent for December 2010, cited in the landlord's Notice to End Tenancy. At the hearing,

the landlord asked for an Order of Possession, and a monetary award for unpaid rent in December 2010 and January 2011, which also remains outstanding.

Analysis

Order of Possession

The tenants failed to pay the December 2010 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenants 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 this tenancy and required the tenants to vacate the premises by December 19, 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 tenants. If the tenants do not vacate the rental unit within 2 days, the landlord may enforce this Order in the Supreme Court of British Columbia.

Monetary Award

I find that the landlord is entitled to a monetary award for the outstanding rent for this tenancy. As there is undisputed evidence that the tenants have not paid rent for this tenancy for December 2010 and January 2011, I allow the landlord a monetary award for \$875.00 for each of these months.

I allow the landlord to recover the \$50.00 filing fee from the tenants.

The landlord still holds the tenant's \$380.00 security deposit plus interest from October 1, 2008. Although the landlord's application does not seek to retain the deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit plus interest in partial satisfaction of the monetary award.

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 following terms which allows the landlord to recover unpaid rent owing since December 1, 2010 and the filing fee, and to retain the tenants' security deposit plus interest in partial satisfaction of the monetary award:

Item	Amount
Unpaid December 2010 Rent	\$875.00
Unpaid January 2011 Rent	875.00
Less Security Deposit plus interest (\$380.00 + 1.43 = \$381.43)	-381.43
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$1,418.57

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*.