

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlords' 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 tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties were represented at this hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord's female representative testified that she gave the tenant two 10 Day Notices to End Tenancy for Unpaid Rent on January 3, 2011. One of these was for \$650.00 in unpaid rent for November 2010, subsequently revised to \$350.00. The other was for \$850.00 in unpaid rent for January 2011. The landlords testified that they sent the tenant a copy of their dispute resolution hearing package by registered mail on January 17, 2011. The tenant's representative confirmed that all of the above documents and the landlords' written evidence were received by the tenant. I am satisfied that these documents were served by the landlord in accordance with the *Act*.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This month-to-month tenancy commenced on October 1, 2010. Monthly rent is set at \$850.00, payable on the first of the month. The landlords continue to hold the tenant's \$425.00 security deposit plus interest.

The landlords provided written evidence of a \$650.00 NSF cheque issued by the tenant on November 26, 2010 for rent owing for November 2010. The landlords entered into evidence undisputed testimony that the tenant has failed to pay \$350.00 of her November 2010 rent and any of her \$850.00 rent owing for January 2011. The landlords' representative asked for an Order of Possession and a monetary award of \$1,250.00 which included recovery of the landlords' filing fee for this application.

Analysis

Order of Possession

The tenant failed to pay all of the rent identified as owing within five days of receiving the two 10 Day Notices to End Tenancy on January 3, 2011. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notices. 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 this tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by January 14, 2011. As that has not occurred, I find that the landlords are entitled to an Order of Possession.

The tenant's representative asked the landlords' representatives for additional time to vacate the rental premises. The landlord's representative agreed to this request and asked for a 5 day Order of Possession. I find that the landlords are entitled to a 5 day Order of Possession. The landlords 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 5 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

Monetary Award

Based on the landlords' undisputed evidence, I find that the landlords are entitled to a monetary award in the amount of \$1,200.00 for unpaid rent and \$50.00 to recover the landlords' filing fee for their application.

I also allow the landlords to retain the tenant's \$425.00 security deposit plus interest in partial satisfaction of the landlords' monetary award. No interest is applicable over this period.

Conclusion

I provide the landlords with a formal copy of an Order of Possession to take effect within 5 days of the landlords' 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 landlords' favour in the following terms which allows the landlords to recover unpaid rent and their filing fee for this application from the tenant, and to retain the tenant's security deposit.

Item	Amount
Unpaid November 2010 Rent	\$350.00
Unpaid January 2011 Rent	850.00
Less Security Deposit	-425.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$825.00

The landlords are 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*.