

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to section 55 of the *Residential Tenancy Act* (the *Act*) for an Order of Possession and for a monetary order for unpaid rent pursuant to section 67.

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 he left a 10 Day Notice for Unpaid Rent in the tenant's mailbox on January 2, 2011. The landlord testified that he gave one of the tenant's family members a copy of the dispute resolution hearing package on January 21, 2011. The tenant confirmed having received both of these documents. I am satisfied that the landlord served these documents to the tenant in accordance with the *Act*.

I revised the landlord's application to include his request for recovery of his \$50.00 filing fee which was outlined in the narrative of his application form.

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 his filing fee for this application from the tenant?

Background and Evidence

This month-to-month tenancy commenced on March 1, 2009. Monthly rent was set at \$725.00, payable on the first of each month. The landlord continues to hold the tenant's \$725.00 security deposit plus interest paid on March 1, 2009.

The landlord applied for a monetary award of \$2,275.00 for unpaid rent. This included unpaid rent of \$50.00 for October 2010, \$725.00 for each of November 2010, December 2010 and January 2011, and the \$50.00 filing fee for this application. At the hearing, the landlord said that the tenant has not paid rent for February 2011. He asked that his request for a monetary award include this additional unpaid rent. The tenant confirmed that the rent requested remains owing, as does his rent for February 2011.

Analysis

The tenant failed to pay any of the \$2,225.00 in rent identified as owing in the 10 Day Notice to End Tenancy within five days of receiving that Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving that

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 January 16, 2011 and required him to vacate the premises by that date. 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 Award

Based on the undisputed testimony of the parties, I find that the landlord is entitled to a monetary award of \$2,950.00 for the rent outstanding from this tenancy.

The landlord testified that he continues to hold the tenant's security deposit of \$725.00 plus interest from March 1, 2009 until the date of this decision. Over that period no interest is payable on the landlord's retention of the security deposit. 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 in partial satisfaction of the monetary award.

Since the landlord has been successful in this application, I allow him to recover his \$50.00 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 the landlord to recover the unpaid rent from this tenancy, to recover his filing fee for this application and to retain the tenant's security deposit.

Item	Amount
Unpaid October 2010 Rent	\$50.00
Unpaid Rent – Nov. 2010 to Feb. 2011 (4 months @ \$725.00 = \$2,900.00)	2,900.00
Less Security Deposit	-725.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$2,275.00

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*.