

DECISION

Dispute Codes OPR, MNR, MNSD, 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;
- 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 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 parties agreed that the landlord gave and the tenant received the landlord's 10 Day Notice to End Tenancy for Unpaid Rent posted on the tenant's door on February 2, 2011, and the landlord's dispute resolution hearing package handed to the tenant on February 23, 2011. 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 for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested? 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, 2010. Monthly rent was set at \$725.00, payable on the first of each month. The landlord continues to hold the tenant's \$362.50 security deposit paid on or about March 1, 2010.

The parties both testified that the outstanding amount of unpaid rent from this tenancy that has not been addressed in a previous decision of a Dispute Resolution Officer is \$2,832.50. The landlord asked for a 2 Day Order of Possession and a monetary award for rent owing from this tenancy, including outstanding rent for March 2011, which has not yet been paid. The parties agreed that the landlord accepted two rent payments after he issued the 10 Day Notice to End Tenancy, but that the landlord advised that his acceptance of these payments was not going to continue this tenancy.

Analysis

Order of Possession

The tenant failed to pay the \$2,307.50 identified as owing in the February 2, 2011 Notice to End Tenancy within five days of being served with that Notice. 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 her tenancy and required the tenant to vacate the premises by February 17, 2011. 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 both parties, I issue a monetary award in the landlord's favour in the amount of \$2,832.50 for unpaid rent.

I allow the landlord to retain the tenant's \$362.50 security deposit plus interest to partially offset this award. No interest is payable over this period.

Since the landlord has been successful in his application, I allow him to recover his \$50.00 filing fee 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 amount of **\$2,520.00** which allows the landlord a monetary award for unpaid rent and for recovery of his filing fee. I direct the landlord to retain the tenant's security deposit.

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*.

