

DECISION

Dispute Codes OPL, 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 his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:22 p.m. in order to enable the tenant to connect with this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. He testified that he handed the tenant a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice) on November 5, 2010. He testified that he handed the tenant a copy of his dispute resolution hearing package on March 2, 2011. I am satisfied that the landlord served these documents to the tenant in accordance with the *Act*.

At the commencement of the hearing, I agreed to correct an error in the Notice served to the tenant. On the Notice, the landlord had incorrectly identified November 5, 2010 as the date by which the tenant was to vacate the rental unit. The landlord said that he clearly told the tenant that he was expecting her to leave the rental unit by January 31, 2011. In accordance with the *Act*, I revised the date on the Notice by which the tenant was to end this tenancy to January 31, 2011.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover his filing fee for this application from the tenant?

Background and Evidence

The landlord testified that this month-to-month tenancy commenced seven years ago. Current monthly rent is set at \$750.00, payable on the first of the month. When the landlord purchased the property in 2006, he was left in custody of the tenant's security deposit of \$375.00.

The landlord testified that he issued the Notice because his wife's family is planning to move to this community and occupy this rental unit. He said that the first of her family is scheduled to arrive on March 11, 2011. He said he understood that the tenant was

entitled to one month of free rent (i.e., December 2010) as a result of his issuance of the Notice to the tenant. However, since he issued the Notice, he said the tenant has failed to pay any rent. He requested a monetary award of three month's unpaid rent from January until March 2011 and recovery of his filing fee for this application

Analysis

Order of Possession

The tenant has not made application pursuant to section 49(8) of the *Act* within fifteen days of receiving the 2 Month Notice to End Tenancy for Landlord's Use of Property. In accordance with section 49(9) of the *Act*, the tenant's failure to take this action within fifteen days led to the end of her tenancy on January 31, 2011 and required her to vacate the rental 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 evidence of the landlord, I allow the landlord's application for a monetary award for three months of unpaid rent at \$750.00 per month.

The landlord testified that he continues to hold the tenant's security deposit of \$375.00 plus interest that has been held for the past seven years. 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. The landlord purchased the property in 2006 and has no accurate records regarding when the tenant first occupied the rental premises. As such, I calculate the entitlement to interest on the tenant's security deposit dating from January 1, 2004 until the date of this decision.

Since the landlord has been successful in this 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 following terms which allows the landlord to recover unpaid rent and his filing fee for this application and to retain the tenant's security deposit plus interest.

Item	Amount
Unpaid January 2011 Rent	\$750.00
Unpaid February 2011 Rent	750.00
Unpaid March 2011 Rent	750.00
Less Security Deposit plus Interest (\$ 375.00 + \$13.27 = \$388.27)	-388.27
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,911.73

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*.