

## **DECISION**

### **Dispute Codes:**

OPC; OPB; MND; MNR; MNSD; MNDC; FF

### **Introduction**

This is the Landlord's application for an Order of Possession; a Monetary Order for damages to the rental unit, unpaid rent, unpaid security and pet damage deposit, and loss of rent; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

### **Preliminary Matter**

The Landlords have applied for damages to the rental unit. This portion of their application is premature. Therefore their claims for: the cost of cleaning the walls; repairing the carpet on the deck; reseeding a portion of the lawn; and cutting a padlock off a fence are dismissed with leave to reapply.

### **Issues to be Decided**

- Are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to a monetary award for unpaid rent for March, 2011; loss of revenue for April, 2011; NSF fees; and unpaid security and pet damage deposits?

### **Background and Evidence**

The parties agreed on the following facts:

- The Landlords personally served the female Tenant with the One month Notice to End Tenancy for Cause on February 16, 2011, at the rental property.
- This tenancy began on November 1, 2010. Monthly rent is \$1,100.00, due on the first day of each month. A security deposit in the amount of \$550.00 and a pet damage deposit in the amount of \$550.00 were due at the beginning of the tenancy.
- The Tenants only paid \$250.00 of the security and pet damage deposits.
- The Tenants were late paying rent in December, 2010, and January, February and March, 2011. March rent remains unpaid.

The Landlord gave the following testimony:

The Tenants paid rent late which caused the Landlords to be overdrawn on their mortgage payments. The Landlord seeks compensation in the amount of \$75.00 from the Tenants (\$25.00 x 3 late mortgage payments).

The Landlords advertised the rental unit for sale and re-rented it on March 13<sup>th</sup> for May 1, 2011. The Landlords stated that they were not certain that the Tenants would move out at the end of March, 2011, and that their new tenants had to give one month's notice to their current landlords, so the Landlords could not re-rent the rental unit until May 1, 2011. The Landlords seek compensation for loss of revenue for the month of April, 2011, from the Tenants.

The Landlords seek a monetary award in the amount of \$850.00, representing the balance of the security and pet damage deposits owed by the Tenants.

The Tenant gave the following testimony:

The Tenant testified that they were late paying the rent, but that they had a verbal agreement with the Landlords that they could pay rent on the 15<sup>th</sup> of each month instead of the first.

## **Analysis**

The Notice to End Tenancy provides a number of causes for ending the tenancy. One of the causes is for repeated late payment of rent. The Residential Tenancy Branch Policy Guidelines provide that three late payments are sufficient to constitute “repeated late payment of rent”. A copy of the tenancy agreement was entered in evidence. The agreement clearly states that rent is due on the first day of each month. The Landlord disputed that he had a verbal agreement with the Tenant that he would accept rent late.

Based on the testimony of both parties, I accept that the Landlord served the Tenant with the Notice to End Tenancy on February 16, 2010. The Tenants did not file for dispute resolution, within 10 days of receiving the documents. Therefore, pursuant to the provisions of Section 47(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. The Notice is effective March 31, 2011. The Landlord is entitled to an Order of Possession and I make that Order.

There is a provision in the Act and regulation for late fees and NSF fees under certain circumstances. Section 7 of the Residential Tenancy Regulation states:

### **Non-refundable fees charged by landlord**

**7** (1) A landlord may charge any of the following non-refundable fees:

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;
- (c) a service fee **charged by a financial institution** to the landlord for the return of a tenant's cheque;
- (d) subject to subsection (2), **an** administration **fee** of not more than \$25 for the return of a tenant's cheque by a financial institution **or** for late payment of rent;
- (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the

tenant moving between rental units within the residential property, if the tenant requested the move;

(f) a move-in or move-out fee charged by a strata corporation to the landlord;

(g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

(emphasis added)

In this case, the Landlord seeks to recover fees charged by his bank for insufficient funds. The Landlords did not provide documentary evidence that they were charged service fees by their financial institution as outlined in Section 7(1)(c). There is no provision for fees in the tenancy agreement as outlined in Section 7(1)(d). This portion of their application is dismissed.

Based on the testimony of both parties, the Landlord has established a monetary claim for unpaid rent for the month of March, 2011, in the amount of \$1,100.00.

If a month-to-month tenancy is ended for cause, there can be no claim for loss of rent for the month subsequent to the date that the Notice is effective because a Notice given by the Tenant could have ended the tenancy at the same time. The Landlords' application for loss of revenue for the month of April, 2011, is dismissed.

If a tenant does not pay a security or pet damage deposit within 30 days of the date it is due, the landlord's remedy is to issue a Notice to End Tenancy for Cause. The Landlords' application for a monetary award for the balance owing is dismissed.

Pursuant to Section 72(2)(b) of the Act, the Landlords may apply the security and pet deposits being held towards partial satisfaction of the Landlords' monetary claim.

The Landlords have been partially successful in their application and are entitled to recover the cost of the \$50.00 filing fee from the Tenants.

The Landlords have established a monetary award as follows:

Unpaid rent for March, 2011	\$1,100.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,150.00
Less deposits	- \$250.00
TOTAL AMOUNT DUE TO THE LANDLORDS AFTER SET-OFF	\$900.00

### **Conclusion**

I hereby grant the Landlords an Order of Possession **effective 1:00 p.m., March 31, 2011**. This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby grant the Landlords a Monetary Order in the amount of \$900.00 against the Tenants. This Order must be served on the Tenants and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order 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.

Dated: March 25, 2011.

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