

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 the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:12 a.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. The landlord entered written evidence that he witnessed the posting of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) to the tenant on March 3, 2011. The landlord testified that he sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on March 19, 2011. He provided the Canada Post Tracking Number to confirm this mailing. 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 keep the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy commenced as a six-month fixed term tenancy on September 1, 2010, but was converted to a month-to-month tenancy following the expiration of that term. Monthly rent is set at \$800.00, payable on the first of each month, plus a \$10.00 storage fee. The landlord continues to hold the tenant's \$400.00 security deposit paid on September 1, 2010.

The landlord posted the Notice for \$800.00 in unpaid rent when the tenant did not pay any of his March 2011 rent. The landlord testified that the tenant paid \$800.00 for use and occupancy of the premises on March 28, 2011, the same date that he paid a

\$25.00 late fee and a \$10.00 storage fee for that month. When April 2011 rent came due, the tenant paid \$165.00, accepted again by the landlord for use and occupancy only.

The landlord applied for a monetary award of \$1,645.00, the amount that he considered would be owing for March and April 2011 by the time this hearing could be convened. At the hearing, the landlord revised his request for a monetary award to reflect the above payments. His revised request for a monetary award of \$720.00 reflects \$635.00 in rent owing from April 2011, a \$25.00 late fee, and a \$10.00 storage fee. The landlord also asked for permission to recover the \$50.00 filing fee and to retain the tenant's security deposit to partially offset the monetary award requested.

Analysis

Order of Possession

The tenant failed to pay the March 2011 rent within five days of receiving the 10 Day Notice to End Tenancy. 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 his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by March 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 evidence presented by the landlord, I issue a monetary award in the landlord's favour for \$720.00, the amount presently owing for this tenancy.

I allow the landlord to keep the tenant's \$400.00 security deposit plus interest to partially satisfy the landlord's monetary award. No interest is payable over this period.

Since the landlord has been successful in this application, I allow the landlord to recover the \$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 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 in partial satisfaction of the monetary award.

Item	Amount
April 2011 Rent Owing	\$800.00
Less April 2011 Payment for Use and Occupancy Only	-165.00
Late Fee April 2011	25.00
Storage Fee April 2011	10.00
Less Security Deposit	-400.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$320.00

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*.