Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, OPC, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's request for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, loss of rent, late fees, and authority to retain the security deposit. The tenant did not appear at the hearing. The landlord testified that the tenant was personally served with notification of this hearing at the landlord's office on May 17, 2011. I was satisfied the tenant was sufficiently served with the hearing documents and proceeded to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent, loss of rent, and late fees?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy agreement provides for a tenancy that commenced on February 1, 2011 and requires the tenant to pay rent of $750.00 on the 1st day of every month. The tenant paid a $375.00 security deposit and a $10.00 key deposit. The tenant failed to pay rent for May 2011 and on May 2, 2011 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door. The Notice indicates that $750.00 was outstanding as of May 1, 2011 and has a stated effective date of May 11, 2011. The tenant did not pay the outstanding rent or file to dispute the Notice.

The landlord testified that he last saw the tenant at the rental unit on June 5, 2011 and the tenant may have vacated the rental unit; however, the landlord requested an Order of Possession in the event the tenant remains in the rental unit.

The landlord is seeking to recover unpaid rent for May 2011 and loss of rent for June 2011. In addition, the landlord is seeking to recover $60.00 in late fees for the months

of May and June 2011. With respect to late fees, the tenancy agreement provides the following term:

> There will be a $10.00 charge for rent payments received after the 4th of the month, and another $20.00 charge for rent payments received after the 15th of the month.

Provided as documentary evidence for this hearing were copies of the tenancy agreement and 10 Day Notice.

Analysis

Since the Notice was posted on the tenant's door it is deemed received by the tenant three days later pursuant to section 90 of the Act. Accordingly, the effective date automatically changes to read May 15, 2011 under section 53 of the Act.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days of receiving the Notice, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice. Since the tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended on May 15, 2011 and the landlord is entitled to regain possession of the rental unit.

Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant. If the tenant does not comply with the Order of Possession the landlord may enforce it in The Supreme Court of British Columbia as an Order of that court.

I find the landlord entitled to recover unpaid rent for the month of May 2011 and since the tenant continued to occupy the rental unit in June 2011 I grant the landlord's request for compensation for the month of June. I do not award the landlord any late fees as I find the term to be non-compliant with section 7 of the Residential Tenancy Regulations. Where a term of a tenancy agreement is non-compliant with the Act or the Regulations, the term is unenforceable.

I authorize the landlord to retain the tenant's security deposit and key deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

May 2011 rent	$ 750.00
June 2011 loss of rent	750.00
Filing fee	50.00
Less: security deposit and key deposit	(385.00)
Monetary Order	$ 1,165.00

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

Conclusion

The tenancy has ended and the landlord is provided with an Order of Possession effective two (2) days after service upon the tenant. The landlord is authorized to retain the tenant's security deposit and key deposit and is provided a Monetary Order for the balance of $1,165.00 to serve upon the tenant.

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: June 09, 2011.

Residential Tenancy Branch