



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, loss of rent and authority to retain the security deposit. The tenants did not appear at the hearing. The landlord testified that he served each tenant with a copy of the hearing documents in person at the rental unit on May 11, 2011 in the presence of a witness. Based on the undisputed testimony before me, I accepted that the tenants were sufficiently served and I proceeded to hear from the landlord without the tenants present.

Issue(s) to be Decided

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

Background and Evidence

The landlord provided the following undisputed testimony. The tenancy commenced in January 2011 and the landlord received a \$200.00 security deposit. The rent is \$1,050.00 due on the 1st day of every month. The landlord received \$400.00 towards rent for April 2011 and on April 2, 2011 the landlord personally served each of the tenants a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) indicating \$650.00 in rent was outstanding as of April 1, 2011. The landlord continued to receive \$400.00 from the Ministry for May 2011 and June 2011 rent and the tenant paid the landlord \$135.00 on May 25, 2011. The landlord was at the rental unit yesterday and the unit is still occupied.

The landlord is seeking to recover the unpaid rent for April 2011 and the loss of rent for May and June 2011. Provided as evidence for this hearing was a copy of the 10 Day Notice.

Analysis

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 then, 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 tenants did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on April 12, 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 tenants. If the tenants do 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 April 2011 in the amount of \$650.00 and loss of rent for the month of May 2011 in the amount of \$650.00 less the partial payment of \$135.00 made May 25, 2011. Since the landlord has received \$400.00 towards rent for June 2011 and today's date is June 1, 2011 I do not award the landlord further loss of rent for June 2011 at this time. Rather, the landlord is at liberty to reapply for loss of rent for June 2011 that exceeds \$400.00 if the landlord suffers such a loss despite best efforts to re-rent the unit.

I authorize the landlord to retain the tenants' security 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:

April rent outstanding (\$1,050.00 – 400.00)	\$ 650.00
May loss of rent (\$1,050.00 – 400.00 – 135.00)	515.00
Filing fee	50.00
Less: security deposit	<u>(200.00)</u>
Monetary Order	\$ 1,015.00

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

Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenants. The landlord is authorized to retain the tenants' security deposit and is provided a Monetary Order for the balance of \$1,015.00 to serve upon the tenants. The landlord is at liberty to make a subsequent application

for loss of rent for June 2011 should he suffer a loss of rent in excess of the \$400.00 he has already received from the Ministry for June 2011.

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 01, 2011.

Residential Tenancy Branch