

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 for unpaid rent 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 tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:13 a.m. in order to enable them 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. She provided copies of two 10 Day Notices to End Tenancy for Unpaid Rent (the Notices) she posted on the tenants' door on May 2, 2011 (for unpaid rent for May 2011) and June 2, 2011 (for unpaid rent for June 2011). She testified that she sent a copy of the dispute resolution hearing package to the tenants by registered mail on May 22, 2011. She provided a copy of the Canada Post Tracking Number for this mailing. I am satisfied that these documents were served to the tenants 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 retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy began as a fixed term tenancy on February 1, 2010. When the term expired on July 31, 2010, the tenancy continued as a month-to-month tenancy. Monthly rent is set at \$1,023.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$500.00 security deposit paid on January 26, 2010.

The landlord testified that the May 2, 2011 Notice was issued when the tenants were in arrears for that month's rent plus a portion of April 2011. She testified that since she posted the May 2011 Notice, the tenants have made two payments of \$512.50 accepted by the landlords for use and occupancy only. Part of these payments were applied to outstanding rent from April 2011. The landlord applied for a monetary award of \$508.50

plus recovery of the \$50.00 filing fee. The landlord testified that \$506.50 remains owing from May 2011. She asked for a monetary award of \$556.50 in total and for permission to retain the tenants' security deposit to partially offset this monetary award.

Analysis - Order of Possession

The tenants failed to pay all of the \$508.50 identified as outstanding in the May 2, 2011 Notice within five days of receiving that Notice to End Tenancy. The tenants have 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 tenants' failure to take either of these actions within five days led to the end of this tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by May 16, 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(s). If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Analysis – Monetary Award

Based on the undisputed evidence submitted by the landlord, I issue a monetary award in the landlord's favour in the amount of \$506.50, the amount identified as unpaid rent as of May 26, 2011. As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee for this application from the tenants. I order the landlords to keep the tenants' security deposit plus interest in partial satisfaction of this monetary award. No interest is payable over this period.

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 the filing fee for this application, less the retained amount of the tenants' security deposit.

Item	Amount
Unpaid Portion of May 2011 Rent	\$506.50
Less Security Deposit	-500.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$56.50

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*.