

DECISION

Dispute Codes OPR, MND, MNR, 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 and for damage to the unit, site or property pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:17 a.m. in order to enable the tenants 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 provided a witnessed statement affirming that she posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenants' door on May 16, 2011. Her witness gave sworn testimony that he handed a copy of the landlord's dispute resolution hearing package to an adult (i.e., the father of the female tenant) who he and the landlord believe resides at the rental unit on June 6, 2011. He said that his stepdaughter and her male friend witnessed his service of this document to the female tenant's father. He said he asked to deliver the documents directly to the tenants but the female tenant's father told him that they were asleep and he was unwilling to awaken them. I am satisfied that the landlord served these documents 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 a monetary award for damage arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This one-year fixed term tenancy commencing on February 15, 2011 is set to end on March 15, 2012. Monthly rent is set at \$1,100.00. The landlord continues to hold the tenants' \$550.00 security deposit paid on February 2, 2011.

The landlord gave undisputed testimony that she issued the 10 Day Notice when the tenants failed to pay their May 2011 rent. She testified that they paid \$275.00 towards this rent on May 19, 2011, but have not paid anything further since then. In her application for dispute resolution, she requested a monetary award of \$925.00 which included \$825.00 outstanding from the May 2011 rent, \$100.00 for damage caused to

her fence and gate, as well as the recovery of her \$50.00 filing fee for her application. Since she issued her application for dispute resolution, she said that the tenants have not paid their June 2011 rent of \$1,100.00, which he also asked to be considered in the course of my decision regarding her application.

Analysis - Order of Possession

The tenants failed to pay all of the May 2011 rent within five days of receiving the 10 Day 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 his tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by May 29, 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 tenants. 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 presented by the landlord, I allow the landlord's application for a monetary award of \$825.00 for the unpaid portion of the tenants' May 2011 rent. In addition, I allow the landlord a monetary award of \$1,100.00 for the tenants' failure to pay rent for June 2011.

I find that the landlord has not provided sufficient evidence to support her application for a monetary award for damage to the fence and gate. She provided written evidence that indicates that the tenants dispute who is responsible for the damage to the fence and gate. The landlord testified that she has only started the work on this fence and gate. Although she submitted an estimate from a carpenter to perform this work, she has no receipts or invoices to confirm that she has suffered a monetary loss for damage caused by the tenants during this tenancy. For these reasons, I dismiss the landlord's application for a monetary award for this damage without leave to reapply for this damaged item.

The landlord testified that she continued to hold the tenants' \$550.00 security deposit plus interest paid on February 2, 2011. Over that period, no interest is payable. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Since the landlord has been successful in this application, I allow the landlord to recover her \$50.00 filing fee from the tenants.

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 award in the landlord's favour which allows the landlord to recover unpaid rent and her filing fee for her application, less the amount of the tenants' security deposit which I allow the landlord to retain.

Item	Amount
Unpaid Amount Owing from May 2011 Rent	\$825.00
Unpaid June 2011 Rent	1,100.00
Less Security Deposit	-550.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,425.00

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) 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*.