

DECISION

Dispute Codes OPR, MNR, MNDC, 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 money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:19 a.m. in order to enable them to connect with this hearing. The landlord and the landlord's agent attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The landlord's agent (the landlord) testified that he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenants' door on August 20, 2011. He entered into evidence a photograph of the 10 Day Notice posted on the tenants' door. The landlord testified that he sent a copy of the dispute resolution hearing package to the tenants by registered mail on August 30, 2011. He entered into written evidence a copy of the Canada Post Tracking Number to confirm this mailing. I find 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 and for losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord testified that this one-year fixed term tenancy was to commence on July 28, 2011 and end on July 27, 2012. Monthly rent was set at \$1,800.00. Although the landlord required a \$900.00 security deposit and a \$900.00 pet damage deposit, the landlord testified that the tenants' cheque for these items was returned with insufficient funds in that account. The tenants' first month's rent cheque dated July 27, 2011 was also returned by the landlord's bank with insufficient funds in the tenants' account.

The landlord's application for a monetary Order of \$5,405.00 included the following items:

Item	Amount
Unpaid First Month's Rent Due July 28, 2011	\$1,800.00
Unpaid Second Month's Rent Due August 28, 2011	1,800.00
Unpaid Pet Damage Deposit	900.00
Unpaid Security Deposit	900.00
NSF Cheque Fee	5.00
Total Monetary Award Requested	\$5,405.00

The landlord also applied to recover his \$100.00 filing fee for this application.

Analysis - Order of Possession

Based on the undisputed evidence presented, I find that the tenants failed to pay the first month's rent within five days of receiving the 10 Day Notice. 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 September 3, 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 Order

I find that the tenants have not paid their rent for the first two months of their tenancy. As such, I issue a monetary award in the landlord's favour in the amount of \$1,800.00 for each of the first two months of their tenancy. I also allow the landlord's application for recovery of the \$5.00 loss he suffered for the NSF cheques he received from the tenants.

I dismiss the landlord's application for a monetary award in the amount of the pet damage and security deposits because this tenancy has now ended.

Although the landlord has been successful in his application, I find that he is only entitled to recovery of \$50.00 of his filing fee from the tenants. I do so because I find

that there was no need for the landlord to have claimed for a monetary award in excess of \$5,000.00 requiring a \$100.00 fee for his application.

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 outstanding rent, NSF fees and part of the filing fee for his application:

Item	Amount
Unpaid First Month's Rent Due July 28, 2011	\$1,800.00
Unpaid Second Month's Rent Due August 28, 2011	1,800.00
NSF Cheque Fee	5.00
Partial Recovery of Filing Fee	50.00
Total Monetary Order	\$3,655.00

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*.