

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlords' 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 tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. Landlord JK (the landlord) entered written and oral evidence that the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was handed to the female tenant on July 28, 2011. The female tenant (the tenant) confirmed receiving the 10 Day Notice on that date. The landlord testified that she handed a copy of the landlords' dispute resolution hearing package to the female tenant on August 31, 2011 and to the male tenant on September 2, 2011. The female tenant testified that the landlord handed her this package on September 2, 2011 and confirmed that the male tenant was handed this package a day or two after that date. I am satisfied that the landlord served these documents to the tenants in accordance with the *Act*.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This periodic tenancy commenced on or about June 15, 2009. The landlord did not dispute the tenant's claim that no written tenancy agreement was completed for this tenancy, although she did agree that the landlord received Intent to Rent forms from both tenants for this tenancy. Monthly rent is set at \$700.00, payable in advance on the 30th of the month. The landlord confirmed that she continues to hold the tenants' \$350.00 security deposit paid on or about June 13, 2009.

The landlords' application for a monetary award of \$1,750.00 included \$350.00 in outstanding rent for July 2011, and \$700.00 for each of August and September 2011. The landlord testified that the tenants have not made any rent payments since the landlords issued the 10 Day Notice on July 28, 2011.

The tenant testified that she paid her one-half of the total rent on June 22, 2011 for July 2011 and on July 27, 2011 for August 2011. She said that her \$350.00 rent payments for both of these months were made by cash. The parties agreed that the landlords have not issued receipts for rent payments during this tenancy, including any cash payments made by the tenants. The landlord testified that the female tenant sometimes paid her one-half of the rent by cash and other times by cheque. The landlord maintained that the landlords have not received any rent payments for this tenancy for either August or September 2011.

The tenant testified that the male tenant vacated the premises over a month ago and has not paid his half of the rent for July, August or September. The tenant said that she is now living in transitional housing and has recently made arrangements to have her personal belongings removed from the rental premises as soon as she receives confirmation that the Income Assistance Branch will pay for a moving truck. She said that she has packed her belongings and expects to have a truck hired and available to vacate the rental premises by Sunday, October 2, 2011.

Analysis – Order of Possession

Based on the undisputed evidence presented at the hearing, I find that \$350.00 identified as owing in the landlord's 10 Day Notice on July 28, 2011 remains outstanding and was not paid in full within five days of receiving the 10 Day Notice. The tenants have not made an 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 August 7, 2011. As that has not occurred, I find that the landlord is entitled to an Order of Possession to take effect by October 3, 2011. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenant(s) do not vacate the rental unit by then, the landlord may enforce this Order in the Supreme Court of British Columbia.

Analysis – Monetary Award

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss

under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that there remains rent outstanding from this tenancy.

At the hearing, the parties agreed that no rent payments have been received for this tenancy for September 2011. As such, I find that the landlords are entitled to a monetary award of \$700.00 for unpaid rent for September 2011.

The parties also agreed that one-half of the rent for July and August 2011 remains unpaid. Consequently, I find that the landlords are entitled to a monetary award of \$350.00 for each of July and August 2011.

The only amount in dispute is the landlords' claim for the remaining \$350.00 for August 2011. The tenant testified that she paid her half of the rent for August 2011 when she paid \$350.00 in cash to the landlord on July 27, 2011, after she received her monthly government cheque. The landlord testified that he received no such cash payment from the tenant for August 2011.

Under normal circumstances, clarity with respect to a tenant's claim that she paid cash for her rent could be achieved by examining receipts issued by the landlord. In this case, the parties agreed that the landlord has not issued any receipts for payments made by the tenants, including their cash payments. The landlords' failure to issue cash receipts renders it difficult for the tenant to demonstrate that she made such a cash payment. However, as it would appear to be a prudent business practice for a landlord who accepts cash payments for rent to issue dual receipts for such payments, I find that the landlords have not met the burden of proof required to demonstrate their entitlement to a monetary award for loss of rent for the remaining half of the tenants' August 2011 rent that remains in dispute. For these reasons, I dismiss the landlords' application for a monetary award for \$350.00 of the \$700.00 the landlords claimed for unpaid rent for August 2011.

I allow the landlords to retain the tenants' \$350.00 security deposit plus applicable interest to partially satisfy the monetary award issued in their favour. No interest is payable over this period.

As the landlords have been partially successful in their application, I allow them to recover their \$50.00 filing fee for their application from the tenants.

Conclusion

The landlords are provided with a formal copy of an Order of Possession effective by 1:00 p.m. on October 3, 2011. 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 landlords' favour in the following terms to recover unpaid rent and their filing fee for this application and to allow them to retain the tenants' security deposit.

Item	Amount
Unpaid July 2011 Rent	\$350.00
Unpaid August 2011 Rent	350.00
Unpaid September 2011 Rent	700.00
Less Security Deposit	-350.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,100.00

The landlords are 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*.