

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant 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.

The landlord's agent JZ (the agent) testified that the tenant was sent the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by registered mail on September 2, 2011. The agent provided a Canada Post Tracking Number to confirm this mailing. Although the tenant testified that he has not received that Notice, he said that he has not been checking his mailbox. As I am satisfied that the 10 Day Notice was sent in a way permitted under section 88 of the *Act*, I deem the 10 Day Notice to have been served to the tenant five days after it was sent, as per section 90(a) of the *Act*.

The agent testified that he posted the initial dispute resolution hearing package on the tenant's door on September 17, 2011. The tenant said that he received this package. The agent testified that he sent an amended dispute resolution hearing package increasing the amount of the monetary award sought from \$7,500.00 to \$15,000.00 by registered mail on September 19, 2011. Although the tenant has not received this amended package, I am satisfied that it was served to the tenant in accordance with section 89 of 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 recover the filing fee for this application from the tenant?

Background and Evidence

This one-year fixed term tenancy commenced on September 1, 2011. Monthly rent for this home is set at \$7,500.00, payable in advance on the first of each month. The landlord holds the tenant's \$3,750.00 security deposit paid on or about September 10, 2011.

The landlord sent the 10 Day Notice when the tenant did not pay the September 2011 rent. The landlord's amended application for a monetary award of \$15,000.00 includes unpaid rent for both September and October 2011.

The tenant said that he did not pay his rent because he was dissatisfied that the landlord had not provided him with the services and facilities that the landlord committed to provide when the tenant rented this home. In addition to repairs that the tenant requested but which were not acted upon by the landlord, the tenant was dissatisfied that the indoor pool that was to be included with this tenancy was not heated. He testified that a repair person he retained to look into this matter told him that the pool had not likely been used in ten years.

The landlord's agents testified that the landlord had made a number of attempts to arrange for an inspection and repairs of the pool, but the tenant had not co-operated to the extent necessary. The landlord's agent said that the landlord has indicated a willingness to reduce the monthly rent by \$1,000.00 for September and October for services and facilities that were not as they were supposed to be when this tenancy commenced. One of the landlord's agents also said that they understand that the utility companies have disconnected power and heat to this property or are about to do so because of the tenant's failure to pay his utility bills.

The tenant did not dispute the landlord's agent's assertion that he has not paid rent for either September or October 2011. He said that he is not living in the rental property although his belongings still remain there. He said that he was prepared to vacate the rental unit. He said that the only action required by him would be to hire a moving company. The tenant also said he thought that the proper amount of reduction in his monthly rent should be \$1,500.00 due to the reduced services and facilities, particularly the deficiencies in the indoor pool.

Analysis – Order of Possession

The tenant failed to pay the September 2011 rent within five days of receiving the 10 Day Notice. The tenant has 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 tenant's 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 tenant to vacate the premises by September 18, 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. If the tenant does 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 evidence submitted by the parties, I find that the landlord is entitled to unpaid rent for September and October 2011. However, I find that the amount of the monthly rent owing for those months should be reduced by \$1,250.00 for each month as a result of the services and facilities not provided by the landlord that were to have been included in this tenancy.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit with interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this 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 \$6,250.00 in monthly rent for both of September and October 2011, to recover the filing fee for this application and to retain the tenant's security deposit:

| Item | Amount |
|--|-------------------|
| Unpaid September 2011 Rent (\$7,500.00 - \$1,250.00 = \$6,250.00) | \$6,250.00 |
| Unpaid October 2011 Rent (\$7,500.00 - \$1,250.00 = \$6,250.00) | 6,250.00 |
| Less Security Deposit | -3,750.00 |
| Recovery of Filing Fee for this application | 100.00 |
| Total Monetary Order | \$8,850.00 |

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*.