

## **DECISION AND REASONS**

### Dispute Codes:

**OPR, MNR, MNDC, FF, SS**

### Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, money owed for damages and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions during the hearing.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for Unpaid Rent?

Is the landlord entitled to a monetary Order for unpaid April rent and loss of rental revenue for May, 2009?

Is the landlord entitled to costs for lock replacement?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy agreement requires the Tenants to pay monthly rent of \$1,500.00. This was a fixed term tenancy commencing on August 1, 2008 to August 1, 2009. The parties agree a deposit was not paid.

The parties agreed during the hearing that the tenant owes the landlord rent for the month of April.

The landlord testified that the tenant did not provide written Notice to end the tenancy and that during an April 12, 2009 telephone call with the tenant, the landlord was notified the tenants would be moving out at the end of April.

The tenant testified that during the month of March and up to April 12, 2009 she had been attempting to reach the landlord by telephone and email in order to inform the landlord of their intent to end the tenancy. The tenant testified that she called the landlord's phone number and that she had lost the landlord's new address which the landlord stated was given to the tenant in mid-August, 2008. During the hearing it was determined between the parties that the tenant had been misdialing the landlord's

phone number and that the email address provided by the landlord was missing a number, rendering it unusable.

The landlord is claiming loss of revenue for May, 2009. The landlord testified that during the week of April 17, 2009 they ran an ad in the local newspaper advertising the rental unit but that as the landlord resides in Alberta they were not able to interview potential tenants for a May 1, 2009 possession. The landlord testified that they were able to obtain new tenants for June 1, 2009.

The tenant testified that they made attempts to locate a new tenant who could sub-let the tenancy until the fixed-term expired. The tenant testified that she did discuss potential renters with the landlord. The parties agree that the tenant had identified a potential renter who could assume the tenancy, but there is disagreement between the parties as to what caused this arrangement to fail.

The tenant stated that on March 29, 2009 she sent an email to the landlord at the incorrect email address, asking the landlord to contact her. In this email the tenant did not tell the landlord that they were giving notice to end the tenancy but the email did tell the landlord that the tenant had been attempting to reach the landlord and that she would like the landlord to contact her.

In mid-April, when the landlord became aware that the tenants were moving out the landlord did not offer the tenants an opportunity to complete a move out condition inspection or make any arrangements to meet with the tenants at the end of the month. The tenant testified that the keys to the rental unit were at her mother's residence, five houses down the street and that the landlord could have gone there or called to arrange pick-up of the keys.

The landlord testified that on May 6, 2009 the tenants were served with a 10 Day Notice to End Tenancy. This Notice was served after the tenants had vacated the rental unit. The landlord stated that they no longer require an Order of possession.

The landlord provided a receipt for locks and installation in the sum of \$230.08 and requests loss of April rent and May rent revenue in the sum of \$3,000.00.

### Analysis

The request for an Order of possession is dismissed without leave to reapply as the landlord no longer requires an Order.

From the testimony of both parties it appears there has been some miscommunication. The tenant was provided an incorrect email address to be used for contact with the landlord. Several weeks after the tenancy began the landlord did provide the tenant with a new mailing address, which the tenant stated she lost. The tenant then tried to reach the landlord via a phone number which she was misdialing.

I have determined that the tenants did fail to provide the landlord with a written request to sub-let the rental unit and a written notice to end this fixed-term tenancy, as required by section 52 of the Act; which I have appended at the bottom of this decision. It does appear that the tenant was attempting to provide the landlord with notice, but her calls to the wrong phone number were the result of the tenant's error. The tenant should have been able to rely upon the landlord's email address, which had been provided to the tenant by the landlord; however, the tenant had been provided with a mailing address and phone number for the landlord and could be expected to utilize those in her attempts to provide proper notice to end the tenancy. The landlord testified that they had telephone contact with the tenant on a regular basis and that the tenant did know how to contact them.

Despite the provision of an incorrect email address to the tenant I find that the tenant failed to meet the requirement of section 52 and 45 of the Act which requires either a landlord or tenant to provide notice to end this fixed-term tenancy in writing. A fixed-term tenancy may not be ended unless there is cause or agreement of both parties.

I find that the Tenant has not paid rent in the amount of \$1,500.00 for April, 2009 and that the landlord is entitled to compensation in that amount, plus loss of May rental revenue of \$1,500.00. The landlord did mitigate their losses by immediately advertising the rental unit after becoming aware of the impending vacancy on April 12 and obtaining a tenant for June 1, 2009.

I find that the landlord claim for lock replacement is dismissed without leave to reapply. The landlord did speak with the tenant on April 12, 2009 and failed to arrange a move out condition inspection, as required by section 35 of the Act, when the tenant could have provided the landlord with the keys. I also accept the tenant's testimony that the landlord knew where to locate the tenant and that they could have gone to the tenant's mothers' residence, five doors away from the rental unit.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of **\$3,050.00**, which is comprised of \$1,500.00 for April rent, \$1,500.00 loss of May rent revenue \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution and I grant the landlord a monetary Order in that amount.

In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated June 09, 2009.

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Dispute Resolution Officer

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

#### **Tenant's notice**

**45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.