

DECISION

Dispute Codes: OPR, MNR, MNDC, and FF

Introduction

These applications were brought by both the landlord and the tenants.

By application of May 21, 2010, the landlord seeks an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on May 6, 2010. The landlord also sought a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding. In addition, I exercised my discretion under section 64(3)(c) of the Act to permit the landlord to amend his application to request authorization to retain the security deposit in set off.

By application of May 7, 2010, the tenants seek to have the Notice to End set aside and to dispute the amount of rent owing claimed by the landlord.

Issues to be Decided

These applications require a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order for the unpaid rent and filing fee, and in what amount.

Background and Evidence

This tenancy began on June 1, 2007. Rent is \$1,800 per month plus utilities and the landlord holds a security deposit of \$900 paid on or about January 1, 2007, although as the security deposit cheque was returned NSF, it is not entirely clear as to which future payments were applied to the deposit.

During the hearing, the landlord gave evidence that, at the time of the hearing, the tenants had accumulated a rent shortfall of \$7,838.80 including some failure to pay the water bill which was in the tenants' names but had been charged against the landlord's taxes.

The landlord submitted a copy of a rent reconciliation statement to May 2010, the month in which he applied showing an outstanding balance of \$9,678.80. In the interim, the balance had been reduced to \$7,838.80 reconciled to June 30, 2010.

The landlord had also submitted into evidence something in the order of 250 pages consisting of reports of tenants' NSF cheques from the bank, receipts for rent paid in cash signed by a representative of the landlord, photocopies of each cash payment, etc.

The landlord stated that, after the tenants had five NSF cheques in the first few months of the tenancy, he required that the rent be to be paid in cash.

He said that he has a company office next door to the rental unit where the rent was paid. As a control system, he instructed that any staff member taking a rent payment:

1. Conduct a count of the payment in front of the tenant and conduct recounts until the parties agreed on the amount of the payment;

2. Issue a receipt to the tenant from a numbered receipt book, sign it and have the tenant sign it;
3. Photocopy the currency submitted;
4. Give the tenant a copy of the receipt.

Payments were recorded and reconciled by the professional bookkeeper employed by the company.

While the tenant acknowledged that a large amount of rent was owed, she stated that she did not think it was as high as the landlord claimed. However, she was unable to provide any documentary evidence or point to any part of the landlord's reconciliation statement or supporting evidence that was in error.

Therefore, I find that the landlord's claim for unpaid rent is proven.

Analysis

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenants did not pay the rent within five days of receiving the notice and while they made application to dispute it they provided no evidence in support of the claim.

Accordingly, I find that the landlord is entitled to an Order of Possession effective two days from service of it on the tenant.

I further find that, including recovery of the filing fee for this proceeding and authorization to retain the security deposit plus interest in set off against the balance owed, the tenants owe the landlord an amount calculated as follows:

Accumulated rent and utilities shortfall to June 30, 2010	\$7,838.80
Filing fee	50.00
Sub total	\$7,888.80
Less retained security deposit	- 900.00
Less interest (June 1, 2007 to date)	- 21.54
TOTAL	\$6,967.26

The tenants' application is dismissed in its entirety.

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenant.

In addition to authorization to retain the security deposit in set off, the landlord is also issued with a Monetary Order for **\$6,967.26**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

June 25, 2010