



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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;
- 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 her 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 their sworn testimony, to make submissions and to cross-examine one another. The male tenant (the tenant) confirmed that the tenants received the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on their door on May 7, 2012. The female tenant testified that she received a copy of the landlord's dispute resolution hearing package dropped in front of her when the landlord attempted to serve it to her on or about May 24, 2012. The male tenant (the tenant) confirmed that on June 1, 2012, he received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail. I am satisfied that the landlord served these documents and her written evidence package to the tenants in accordance with the *Act*. Although the Residential Tenancy Branch and the landlord did not receive the tenants' written evidence packages until the business day before this hearing, the landlord testified that she was prepared to proceed with this hearing.

At the hearing, the tenants testified that they vacated the rental unit on June 1, 2012 and had left their keys to the rental unit in the mailbox. The tenant said that they had left the rental unit in the same condition as when they occupied the rental unit. The landlord testified a number of times during the hearing that she did not realize that the tenants had vacated the rental unit. The female tenant said that the tenants had not alerted the landlord that they had vacated the rental unit, preferring to wait until this hearing to determine the outcome of the landlord's application.

Issues(s) to be Decided

Should an Order of Possession be issued to the landlord? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy commenced as a one-year fixed term tenancy on November 1, 2010. When the initial term expired, the tenancy continued as a periodic tenancy. Monthly rent by March 1, 2012 was set at \$1,180.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$575.00 security deposit paid on November 1, 2010.

The landlord's application for a monetary award of \$1,695.00 included the following amounts for unpaid rent and loss of rent arising out of this tenancy:

Item	Amount
Unpaid March 2012 Rent	\$5.00
Unpaid April 2012 Rent	30.00
Unpaid Portion of May 2012 Rent (\$1,180.00 - \$700.00 = \$480.00)	480.00
Loss of Rent for June 2012	1,180.00
Total Monetary Award Requested	\$1,695.00

The parties agreed that the tenants paid \$700.00 of their May 2012 rent on May 5, 2012. The tenant did not dispute the landlord's claim that the tenants had failed to pay the amounts claimed by the landlord for March, April and May 2012. Since the tenant said that the tenants had vacated the rental unit on June 1, 2012, the tenant maintained that they should not be held responsible for paying rent for June 2012. The tenant also testified at one point that the tenants had moved out "a couple of days late."

Much of the tenants' late written evidence and their oral testimony was directed at issues that concerned them during their tenancy. The tenant objected to the landlord's rent increase, maintained that the landlord had not reimbursed them for "emergency repairs" to their roof that they obtained from one of the female tenant's relatives, as well as many other issues that appeared to have little bearing on the landlord's application.

Analysis

It was clear from the tenants' written evidence that the tenants took issue with the landlord's failure to address their concerns about the condition of the rental unit during this tenancy. However, as I noted during the hearing, the tenants have not submitted any application for dispute resolution with respect to their concerns. I advised the parties that the only issues before me were whether the landlord was entitled to obtain an Order of Possession and whether or not the landlord should received a monetary award for unpaid rent or lost rent.

Based on the evidence before me, I find that the tenants have abandoned the rental unit and that this tenancy has ended. In case the tenants have not left their keys to the rental unit for the landlord, I issue an immediate Order of Possession to the landlord.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The tenants did not dispute the landlord's claim that she is entitled to receive a monetary award of \$515.00 for unpaid rent owing from March, April and May 2012. I allow the landlord's claim for a monetary award of \$515.00 for these three months.

Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for June 2012, the tenants would have needed to provide their notice to end this tenancy before May 1, 2012. Section 52 of the *Act* requires that a tenant provide this notice in writing.

There is undisputed evidence that the tenants did not pay any rent for June 2012. I find that the tenants did not advise the landlord that they have vacated the rental unit and left their keys for the landlord until the date of this hearing. On this basis, I find that the landlord is unlikely to be able to re-rent the premises to another tenant for June 2012. For these reasons, I find that the tenants did not comply with the provisions of section 45(1) of the *Act*. The landlord has demonstrated that she is likely to experience a rental loss for June 2012. As such, I issue a further monetary award in the landlord's favour in the amount of \$1,180.00 for her loss of rent for June 2012.

I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. I also allow the landlord to recover her filing fee from the tenants.

Conclusion

The landlord is provided with a formal copy of an immediate Order of Possession to be utilized if the tenants have not in fact vacated the rental unit and left the keys for the rental unit for the landlord, as they said they had at the hearing. 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 unpaid rent, loss of rent and her filing fee for this application and to retain the tenants' security deposit in partial satisfaction of the monetary award:

Item	Amount
Unpaid March 2012 Rent	\$5.00
Unpaid April 2012 Rent	30.00
Unpaid Portion of May 2012 Rent (\$1,180.00 - \$700.00 = \$480.00)	480.00
Loss of Rent for June 2012	1,180.00
Less Security Deposit	-575.00
Filing Fee	50.00
Total Monetary Order	\$1,170.00

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*.

Dated: June 13, 2012

Residential Tenancy Branch