



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OLC AAT O OPR MNR FF

Introduction

This hearing dealt with applications by the tenant and the landlord. The tenant applied for orders that the landlord comply with the Act, regulation or tenancy agreement and that the landlord allow access to or from the rental unit for the tenant or the tenant's guests. The landlord applied for an order of possession and a monetary order.

Issue(s) to be Decided

Was the tenant entitled to withhold the rent?

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent and lost revenue?

Should the landlord be ordered to comply?

Should the landlord be ordered to allow access to or from the rental unit for the tenant or the tenant's guests?

Background and Evidence

The tenancy began on January 1, 2008. Rent in the amount of \$460 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$230. In approximately July 2008, the landlord had discussions with the tenant about the possibility of needing the rental unit for the landlord's mother, but the landlord did not at any time serve the tenant with a two month notice to end tenancy for landlord's use. The landlord or the landlord's agent frequently attended at the rental unit to complain when the tenant was making too much noise or smoking in the rental unit contrary to the tenancy agreement,

to raise concerns about guests who were staying for one or two weeks at a time, or to collect the rent.

The tenant believed that the landlord was evicting him because they intended to use the rental unit for the landlord's mother, and the tenant therefore believed he was entitled to compensation of one month's free rent. On that basis, the tenant did not pay rent for October 2008. On October 10, 2008 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant further failed to pay rent in the month of November 2008. The landlord claims \$460 for October's rent and \$460 for lost revenue for November 2008.

Analysis

The tenant did not receive a two month notice to end tenancy for landlord's use, and was not therefore entitled to compensation equivalent to one month's rent. Further, even if the tenant had received a two month notice, the tenant would not be entitled to withhold the rent without the landlord's agreement.

The tenant has not paid the outstanding rent and has not applied for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. I therefore find that the landlord is entitled to an order of possession.

As for the monetary order, I find that the landlord has established a claim for \$460 in unpaid rent for October 2008. As the landlord may be able to re-rent the unit for the second half of November, I find it is reasonable for the landlord to receive \$230 in lost revenue for the first half of November 2008, with leave to reapply for lost revenue for the second half of November. The landlord is also entitled to recovery of the \$50 filing fee.

On the tenant's application, I find that the tenant has not provided adequate evidence to substantiate an order that the landlord comply or that the landlord allow access, and I decline therefore to make those orders.

Conclusion

I grant the landlord an order of possession. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I grant the landlord a monetary claim in the amount of \$740. I order that the landlord retain the deposit and interest of \$232.92 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$507.08. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant's application is dismissed.

Dated: November 5, 2008.