



Dispute Resolution Services

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

Decision

Dispute Codes: OPR MNR FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order for unpaid rent and loss of revenue.

One of the three individuals named as respondents, V, attended the teleconference hearing. V argued that the other two individuals, R and W, were her parents but they ought not to have been named as respondents because they were not actually tenants and they only signed the tenancy agreement because the landlord insisted on it. The tenant further argued that in any case the lease that they signed was no longer valid because it was for a fixed term that expired on May 15, 2008. The landlord submitted that no subsequent written tenancy agreement had been signed and that the tenancy reverted to a month-to-month tenancy after the end of the fixed term. I found that R and W were properly named as respondents in this application.

The landlord provided evidence that the landlord sent by registered mail to all three respondents the application for dispute resolution and notice of hearing, and that the respondents R and W received their hearing packages. R and W did not participate in the hearing. The tenant V stated that she did not receive notice of the hearing until the day before the hearing, and that the landlord did not use her full mailing address. The landlord provided evidence that Canada Post records indicated that delivery was attempted and a notice card had been left indicating that there was a registered mail parcel to be picked up. I accept the landlord's evidence on this point, and I therefore find that the tenant V is deemed to have been served with notice of the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for the amounts claimed?

Background and Evidence

The tenancy began on June 1, 2007. Rent in the amount of \$688 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 \$344. The tenant failed to pay rent in the month of November 2008 and on November 17, 2008 the landlord served the tenant by both regular mail and registered mail with a notice to end tenancy for non-payment of rent. The landlord provided evidence that Canada Post records indicated that delivery of the notice to end tenancy was attempted and a notice card had been left indicating that there was a registered mail parcel to be picked up. The tenant further failed to pay rent in the month of December 2008 and January 2009. The landlord has applied for an order of possession pursuant to the notice and a monetary order for unpaid rent and lost revenue for November and December 2008. In the hearing the landlord stated that he wished to add to his claim lost revenue for January 1 – 7, 2009.

The testimony of the tenant was that she did not receive the notice to end tenancy. The tenant acknowledged that she had not paid any rent for November, December or January. The tenant argued that she was entitled to December's rent free, pursuant to a two-month notice, and that she was entitled to further compensation for repairs that the landlord did not carry out. The tenant did not make any written requests for repairs.

Analysis

As with the notice of the hearing, I find that the tenant is deemed to have been served with a notice to end tenancy for non-payment of rent. 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. Based on the above facts I 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 \$1376 in unpaid rent and lost revenue for November and December 2008. I decline to amend the landlord's application to include any amounts for January 2009, but it is open to the landlord to make a subsequent application for recovery of lost revenue for January. The tenant's submissions regarding compensation due to her are not relevant to this application. The landlord is also entitled to recovery of the \$50 filing fee.

Conclusion

I grant the landlord an order of possession effective two days after service. 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 order that the landlord retain the deposit and interest of \$352.23 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1073.77. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated January 7, 2009.