

Decision

Dispute Codes:

MNR

OPR

MNSD

FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

This Dispute Resolution Hearing was convened to deal with an Application by the Landlord for an Order of Possession based on the Ten-Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 3, 2008, a monetary order for rent owed and to recover the filing fee for the cost of this application.

The evidence on the case file was reviewed prior to the Hearing. The Landlord gave affirmed evidence.

Issue(s) to be Decided

The Landlord sought an Order of Possession based on the Ten-Day Notice to End Tenancy for Unpaid Rent and Utilities and was also seeking a monetary order for rent arrears, plus reimbursement for the \$50.00 filing fee.

The issues to be determined based on the testimony and the evidence are:

- Whether the Landlord is entitled to an Order of Possession under section 55 of the Act, based on the Ten-Day Notice to End Tenancy ; and
- Whether the Landlord has proven that he is entitled to monetary compensation under section 67 for rental arrears or utilities owed.

Background and Evidence

The Landlord testified that the Tenants were served with the Notice to End Tenancy in person, on December 3, 2008.

The Landlord testified that the Tenants were served with the Application for Dispute Resolution on December 11, 2008, by registered mail on December 15, 2008. The Landlord stated that the registered mail packages enclosing the Application for Dispute Resolution for service on the Tenants were not claimed at the Post Office and were returned to the Landlord.

The Landlord requested to amend the Application for Dispute Resolution, to delete the claim for November's rent arrears, and to amend the amount owing for December's rent to \$2,200.00. The Landlord submitted that the Tenants are still in the rental unit and have not paid rent for January, 2009 in the amount of \$2,200.00.

The tenancy started on September 1, 2008, and the Tenants paid a security deposit on September 1, 2008, in the amount of \$1,100.00.

Analysis

I find that the Tenant was served on December 3, 2008, with the Notice to End Tenancy dated December 3, 2008. The effective date for the end of the tenancy was December 13, 2008. The Tenant did not apply to dispute the Notice and is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on

the effective date of December 13, 2008. I therefore find that the Landlord is entitled to an Order of Possession.

Pursuant to Section 90 of the Act, documents served by registered mail are deemed to have been served on the 5th day after mailing. The documents were sent to the Tenants' address, pursuant to section 89(1)(c), and a notification card was left at the address advising when delivery was attempted and where the documents could be picked up. I therefore find that the Tenants were deemed to be served with the Application for Dispute Resolution on December 20, 2008.

With respect to the Landlord's application to amend the Application to reflect a monthly rent of \$2,200.00 (to correct an error in the Application, where the monthly rental was incorrectly stated to be \$1,100.00), I note that the Notice to End Tenancy, which was personally served on the Tenant, claims outstanding rent in the amount of \$2,200.00 for the month of December, 2008. The Tenant did not dispute the Notice to End Tenancy, and therefore I find that the monthly rent was in fact \$2,200.00 and I allow the Landlord's application to amend the Application for Dispute Resolution.

I find that the Landlord has established a total monetary claim of \$4,450.00, comprised of \$4,400.00 in rent arrears for the months of December, 2008 and January, 2009, and the \$50.00 application fee paid by the Landlord.

I order that the Landlord retain the security deposit of \$1,100.00, together with accrued interest in the amount of \$5.50 in partial satisfaction of the claim leaving a balance due to the Landlord of \$3,344.50.

Conclusion

Under section 55 of the Act, and based on the above facts I find that the Landlord is entitled to an Order of Possession and I hereby issue the order effective two days from

service of the order. This order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Based on the testimony and evidence presented during these proceedings, I grant the Landlord a monetary order under section 67 of the Act for \$3,344.50. This order must be served on the Tenants and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

January 8, 2009
