

Decision

Dispute Codes:

OPR

FF

MNSD

MNDC

MNR

MNSD

Introduction

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

This is the Landlord’s application under sections 67, 55, and 72(1) of the Act.

All of the information in the case file was reviewed and the hearing for this Application proceeded on its merits.

Issue(s) to be Decided

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

Whether or not the Landlord is entitled to a monetary order for unpaid rent and late fees;

Whether or not the Landlord is entitled to an Order of Possession under the 10 day Notice to End Tenancy for Unpaid Rent or Utilities;

Whether or not the Landlord should recover the cost of filing this application from the Tenant.

Preliminary Matters

The Tenant requested an adjournment of the Hearing because she was not served with the Landlord's Application for Dispute Resolution and stated that she only heard about it when she called the Residential Tenancy Branch a few days ago. She stated she made the call because on January 2, 2009, her son had attempted to pay \$1,000.00 toward rental arrears to the Landlord and the Landlord refused to accept the money, stating that there was an outstanding Dispute filed.

The Landlord responded that the Application was mailed to the Tenant at the Tenant's address, by registered mail, on December 12, 2008. She provided the tracking number. A search of Canada Post's web site confirms that there was an attempt to deliver the document to the Tenant on December 17, 2008, and that a Notice card was left at the address for service, indicating where the item could be picked up.

Section 89 (1) of the Act states, in part:

"an Application for Dispute Resolution must be given in one of the following ways:

(c) by sending a copy by registered mail to the address at which the person resides.

Section 90 of the Act provides that a document served in accordance with Section 89 is deemed to be served on the 5th day after it is mailed.

I find that the Tenant was served in accordance with the Act and dismiss her application to adjourn the Hearing.

Background and Evidence

The Tenant and Landlord agreed on the following issues:

- The Tenancy started on July 1, 2004;
- Monthly rent for the rental unit is currently \$1,248.00 and is due on the first day of the month;
- The Tenant paid a security deposit in the amount of \$600.00 on July 1, 2004.

Landlord's evidence

- The Landlord served the Tenant with the 10 day Notice to End Tenancy on December 6, 2008.
- On January 2, 2009, the Tenant attempted to pay \$1,000.00 towards arrears of rent which was due on December 1, 2008, and January 1, 2009, but the Landlord declined to reinstate the tenancy by accepting the payment.
- The Tenant is in arrears for December, 2008 and January 2009.
- The Landlord filed evidence including copies of Invoices and Statements to the Tenant, which indicate that the Tenant did not pay the total rent owing for February, March, April, May, June, July, August, September, October, November and December of 2008. As a result of the partial payments, the Landlord claims that the Tenant owes the Landlord further arrears totaling \$729.00.

Tenant's evidence

- The Tenant did not take the Notice to End Tenancy seriously because they had received Notices in the past and were able to come to an agreement with the Landlord and reinstate the tenancy.

Analysis

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement. The Landlord may have agreed to allow the Tenant to slip into

arrears in the past, but is entitled under the Act to end the tenancy if the Tenant does not pay the rent when it is due.

The Tenant did not dispute that they were served with the 10 Day notice to End Tenancy, and did not file a Dispute within 5 days of being served the Notice. Therefore, they are presumed to accept the tenancy is ending and must move out by the date the Notice becomes effective (in this case December 16, 2008).

Therefore, I find that the Landlord is entitled to an immediate Order for Possession, effective 2 days after service of the Order on the Tenant.

I find that the Landlord has established her claim for rent arrears for the months of December, 2008 and January, 2009, in the total amount of \$2,496.00. I find that the Landlord is entitled to be reimbursed for the \$50.00 filing fee of this Application for Dispute Resolution.

I find that the Landlord has established that she is owed \$454.00 of the \$729.00 she claims for further arrears, because \$275.00 of that amount is late fees for the 11 months that the Tenant was late paying rent.

Section 7(1) of the Residential Tenancy Regulations states, in part:

“A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administrative fee of not more than \$25.00 for the return or a tenant’s cheque by a financial institution or for late payment of rent;”

Subsection (2) of Section 7 states, in part:

“A landlord must not charge the fee described in paragraph (1)(d) unless the tenancy agreement provides for that fee.

The Landlord did not establish that the tenancy agreement provided for an administrative fee for late payment of rent and therefore I dismiss that part of the Landlord's claim.

I find that the Landlord has established a total monetary claim of \$3,000.00 comprised of rent arrears totalling \$2,496.00, further past arrears of \$454.00 and the \$50.00 fee paid by the Landlord for this application. Pursuant to Section 72(2)(b) of the Act, I order that the Landlord retain the security deposit of \$600.00 plus interest of \$21.25, for a total of \$621.25 in partial satisfaction of the claim leaving a balance due of \$2,378.75.

Conclusion

I hereby issue an Order of Possession in favour of the Landlord effective two days after service on the Tenant. This order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I hereby grant the Landlord a monetary order under Section 67 of the Act for \$2,378.75. This order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

January 6, 2009
