

Decision

Dispute Codes:

MNR

MT

MNSD

CNR

MNDC

OLC

FF

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.

File #728835 is the Landlord’s application under sections 55, 72(1), and 67 of the Act. File #729737 is the Tenant’s cross-application under sections 66(1), 46(4) and 62(3) of the Act.

Both of the case files were reviewed prior to the Hearing and the parties gave affirmed testimony.

Preliminary Matters

This Hearing was originally set to hear the Landlord’s Application on file #728835. At the beginning of the hearing, the Tenant advised that they had filed an Application for Dispute Resolution under file #729737, which was set for Hearing January 8, 2008. The Tenant’s application on file #729737 was to cancel the Landlord’s Notice to End Tenancy and therefore I determined that the two matters should be heard together on January 8, 2008. Both parties requested that the Hearing for both matters be heard today, so they would not have to take more time off work. We stood down briefly in order that I could retrieve and review file #729737, together with the evidence on the file. The Hearing reconvened with both files and both parties present.

Issue(s) to be Decided

RE: File 728835

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 dated December 2, 2008; and
- Whether the Landlord has proven that he is entitled to monetary compensation under section 67 for rental arrears or utilities owed.

RE: File 729737

The Tenant requested to be allowed more time to file his Application for Dispute Resolution, as it was filed one day late. The Tenant further applied to cancel the Notice to End Tenancy and asked for an order that the Landlord comply with the Act.

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

- Whether the Tenant should be allowed more time to file his Application for Dispute Resolution, under section 66(1) of the Act;
- Whether the Landlord's Notice to End Tenancy dated December 2, 2008 should be cancelled under section 46(4); and
- Whether the Landlord should be ordered to comply with the Act with respect to entering the Tenant's home.

Background and Evidence

The Parties agreed on the following facts:

- The Tenancy started on October 1, 2008.
- The monthly rent was \$1,400.00. Rent was due on the first of every month.
- The Tenant paid a security deposit in the amount of \$700.00 on October 2, 2008.
- The Tenant is in arrears in the amount of \$2,800.00, for December, 2008 and January, 2009 rent.

Tenant's Evidence

The Tenant stated that he was served with the Notice to End Tenancy dated December 2, 2008 on December 3, 2008.

The Tenant said he has not paid rent for the months of December and January because he was laid off from work on November 28, 2008 and does not have sufficient funds to pay the rent. He alleged that the Landlord entered his home without due notice on three occasions and asked that the Landlord be ordered to comply with the Act with respect to giving notice.

Landlord's Evidence

The Landlord stated that the Notice to End Tenancy dated December 2, 2008 was served personally on the Tenant on December 2, 2008.

The Landlord submitted that he did enter the Tenant's home on December 2nd, but that it was with the Tenant's permission. On the second occasion, the Landlord stated he phoned the Tenant on December 8, 2008 and left a message that he would like to show the rental unit to prospective tenants on December 9, 2008. When he received no reply, he knocked on the Tenant's door on December 9th to see whether he could show the rental unit. The Tenant declined to give permission and requested 24 hour written notice. The Landlord accordingly provided the Tenant with written notice and tendered a copy of the notice as evidence on file 729737. The Landlord denies entering the Tenant's home on any other occasion without proper notice.

Analysis

RE: File 729737

With the Landlord's consent, I allowed the Tenant's application to file the Application late under section 66(1) of the Act.

The Tenant agreed that he has not paid rent for the months of December, 2008 and January, 2009. Section 26(1) of the Act states:

“A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.”

The Tenant had no right under the Act to deduct all or a portion of the rent, and therefore I dismiss the Tenant's application to cancel the Notice to End Tenancy dated December 2, 2008.

I confirmed that the Landlord understood the requirements under the Act for entering a tenant's home and decline to issue a formal order with respect to complying with the Act.

RE: File 728835

I find that the Landlord is entitled to an immediate Order of Possession.

I find that the Landlord has established a total monetary claim of \$2,850.00, comprised of rent arrears for December, 2008 and January, 2009, together with the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$700.00 and interest of \$2.61, for a total of \$702.61 in partial satisfaction of the claim leaving a balance due to the Landlord of \$2,147.39.

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 Tenant 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 \$2,147.39. 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 7, 2009
