

Decision

Dispute Codes:

OPR

MNR

MNSD

MNDC

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 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2008, for a monetary order for unpaid rent and damage or loss under the Act, 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 testimony at the Hearing and this Application proceeded on its merits.

Issue(s) to be Decided

The Landlord sought an Order of Possession pursuant to Section 55 of the Act based on the Notice to End Tenancy, a monetary order under Section 67 of the Act, and reimbursement for the \$50.00 filing fee pursuant to Section 72(1) of the Act.

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

- Whether the Landlord is entitled to an Order of Possession based on the 10 Day Notice to End Tenancy;
- Whether the Landlord is entitled to a monetary order for unpaid rent or damages.

Background and Evidence

The Landlord testified that she served the Tenant with the Notice to End Tenancy dated December 2, 2008 by posting it on the Tenant's door on December 2, 2008. She testified that she served the Tenant with the Application for Dispute Resolution filed on December 12, 2008, on December 16, 2008, by personal service. The Landlord said that the Tenant is still living in the rental unit.

The Landlord stated that the Tenant paid \$650.00 on December 13, 2008, but that she did not agree to re-instate the tenancy. She gave the Tenant a receipt for "use and occupancy only". The Tenant did not make any payment to the Landlord after December 13, 2008.

The Landlord testified that there is a \$25.00 fee for late payment of rent, which is included in paragraph 12 of the tenancy agreement. The tenancy agreement was signed by the Tenant.

The Landlord testified that the Tenant paid a security deposit on October 19, 2008, in the amount of \$325.00. The monthly rent is \$650.00 and is due on the first of each month.

Analysis

Section 90 of the Act states that a document which is attached to the door at which the person resides, is deemed to have been served on the third day after it is attached to the door. Therefore I find that the Tenant was served on December 5, 2008, with the Notice to End Tenancy dated December 2, 2008 and the effective date for the end of the tenancy was December 15, 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 15, 2008. I therefore find that the Landlord is entitled to an Order of Possession.

The Tenant paid \$650.00 to the Landlord on December 13, 2008. The Landlord accepted this payment for use and occupancy only and did not reinstate the Tenancy. The Tenant is still living in the rental unit and has not paid any money to the Landlord since December 13, 2008. Therefore the Landlord is entitled to damages in the amount of \$650.00 for the loss of January's rent.

The Landlord is entitled to the \$25.00 late fee for the month of December, 2008, because the Tenant did not pay December's rent on time. I dismiss the Landlord's application for the late fee for January, 2009, as the tenancy ended on December 15, 2008.

The Landlord was successful in today's application and is therefore entitled to recover his filing fee in the amount of \$50.00.

I find that the Landlord has established a total monetary claim of \$725.00 comprised of \$650.00 for loss of January's rent, \$25.00 for late fees for December's rent, 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 \$325.00 plus interest of \$.99, for a total of \$325.99 in partial satisfaction of the claim, leaving a balance due of \$399.01.

Conclusion

Under section 55 of the Act, and based on the above facts, the Landlord is entitled to an immediate Order of Possession and I hereby issue the order. The Tenant will have two days from the date of service of the order to vacate the premises. This 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 order under section 67 of the *Act* for \$399.01. 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 14, 2009
