

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 2, 2008, a monetary order for rent and utilities owed and to recover the filing fee for the cost of this application.

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 he served the Notice to End Tenancy upon the Tenant, by posting it to the door of his residence on December 3, 2008.

The Landlord testified that he served the Tenant with the Application for Dispute Resolution on December 13, 2008, by registered mail. The Landlord advised that the registered mail was returned to him last week, unclaimed. A check of the Canada Post website confirmed that a notice had been left at the Tenant's residence advising that he had registered mail and where it could be picked up.

The Landlord testified that:

- the tenancy started on February 16, 2006;
- rent was \$684.00 per month and the tenant paid a security deposit of \$350.00 on January 28, 2006;
- the Tenant owes arrears in rent for the month of December, 2008 and January, 2009 totaling \$1,368.00, arrears for parking in the amount of \$30.00, late fees in the amount of \$50.00, and owes \$78.03 for utilities.

Analysis

Pursuant to Section 90(c) of the Act, the Tenant was deemed to have been served with the Notice to End Tenancy dated December 2, 2008 three days after posting it on his residence door. The Notice was posted to the Tenant's door on December 3, 2008.

Therefore, the Tenant was deemed to have been served on December 6, 2008, and the effective date for the end of the tenancy was December 16, 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 the Notice. I therefore find that the Landlord is entitled to an Order of Possession.

The Application for Dispute Resolution was sent by registered mail to the Tenant on December 13, 2008. The post office returned the registered mail to the Landlord because the Tenant did not pick it up, although a notice had been left by the post Office advising that it was there for pick up. Section 90(a) of the Act deems service of mailed documents to be effective on the fifth day after they are mailed. Therefore the Tenant was deemed to have been served with the Application for Dispute Resolution on December 18, 2008.

In the Application for Dispute Resolution, the Landlord claims parking arrears in the amount of \$30.00. A copy of the Tenancy Agreement was submitted into evidence, but there is no clause in the agreement respecting a fee for parking, and therefore I dismiss this part of the Landlord's claim.

The Landlord claims late fees in the amount of \$50.00 for the months of December, 2008 and January, 2009. There is a clause in the Addendum to the Tenancy Agreement imposing a fee for late payment of rent and I allow this portion of the Landlord's claim.

The Landlord claims \$78.03 for unpaid electricity and provided a copy of the electrical account for the City of New Westminster showing that \$78.03 is owing for the rental unit as at November 24, 2008. Electricity is not included as part of the rent under the Tenancy Agreement. However there is no evidence that the Landlord gave written demand for payment to the Tenant, and therefore I dismiss this part of the Landlord's claim.

I find that the Landlord has established a total monetary claim of \$1,468.00, comprised of \$1,368.00 in rent arrears, \$50.00 in late fees and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$325.00, together with accrued interest in the amount of \$11.37 in partial satisfaction of the claim leaving a balance due to the Landlord of \$1,131.63.

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 \$1,131.63. 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 13, 2009
