

Decision

Dispute Codes:

MNR

OPR

FF

MNSD

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 owed and to recover the filing fee for the cost of this application.

Both parties gave affirmed evidence at the Hearing. All of the material on the case file was reviewed and this Hearing proceeded on its merits.

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 and utility 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 Parties agreed on the following facts:

- The Notice to End Tenancy dated December 2, 2008 was served on the Tenant by posting it on his door on December 2, 2008.
- The Application for Dispute Resolution filed December 12, 2008, was served on the Tenant by registered mail, sent on December 13, 2008.
- The Tenancy started on November 1, 2007.
- The monthly rent at the beginning of the Tenancy was \$790.00, and was increased to \$820.00 per month effective November 1, 2008. Rent was due on the first of every month.
- The Tenant paid a security deposit in the amount of \$395.00 on October 5, 2007.
- The Tenant is in arrears in the amount of \$860.00, for January rent and for late arrears of \$20.00 for each of the months of November and December.

Landlord's Evidence

The Landlord submitted that the Tenant has been late in paying rent for the months of September, October, November, December, 2008 and January, 2009.

The Tenant paid \$500.00 towards the December rent on December 27 and \$300.00 towards the December rent on December 31. The balance owing on December's rent is \$20.00.

The Landlord is not prepared to reinstate the Tenancy, because rent arrears are still owing for the months of November and December, 2008, and the rent for January remains unpaid in its entirety.

Tenant's Evidence

The Tenant agreed that he is in arrears for rent and apologized for the late payments.

The Tenant agreed that he has been late paying rent for the last 3 months, not for four months. He stated that he was late in paying the rent because he had a back operation and was unable to work.

Analysis

Pursuant to section 90 of the Act, service by posting a document to the door is deemed to be effective 3 days after it is posted. I find that the Tenant was served on December 5, 2008, with the Notice to End Tenancy dated December 2, 2008. 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 the Notice.

Late in December, 2008, the Tenant paid some money towards the December, 2008 rent, which was accepted by the Landlord. However, the total amount owing for December's rent was not paid and \$20.00 still remains outstanding. I find that the tenancy was not reinstated due to the Landlord accepting the two payments, and that the end of tenancy remains at December 15, 2008.

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

I find that the Landlord has established a total monetary claim of \$910.00, comprised of \$820.00 in rent arrears for January, 2009, \$20.00 in rent arrears for the month of November, 2008, \$20.00 in rent arrears for the month of December, 2008 and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$395.00 and interest of \$7.38, for a total of \$402.38 in partial satisfaction of the claim leaving a balance due to the Landlord of \$507.62.

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 \$507.62. 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
