

Decision

Dispute Codes:

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.

I reviewed the evidence on the case file prior to the Hearing and 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 the Landlord is entitled to an Order of Possession under section 55 of the Act, based on the 10 day Notice to End Tenancy;
- Whether the Landlord is entitled to a monetary order under section 67 of the Act; and
- Whether the Landlord is entitled to recover the filing fee of \$50.00 from the Tenant.

Background and Evidence

The Landlord testified that a process server served the Tenant with the Notice to End Tenancy dated December 10, 2008 by personal service on December 11, 2008. A copy of the process server’s affidavit of service was provided into evidence.

The Landlord testified that he mailed the Tenant the Application for Dispute Resolution filed on December 30, 2008, together with the Notice of Hearing and copies of the

evidence by sending the documents via registered mail to the rental unit on December 31, 2008. He provided a copy of the receipt for the registered mail, indicating a delivery confirmation date of January 12, 2009.

The Landlord testified that the Tenant paid a security deposit on April 4, 2008, in the amount of \$400.00. The monthly rent is \$800.00 and is due on the first of each month. The Landlord submitted that the Tenant is in arrears for the month of December, 2008 in the amount of \$800.00. The Landlord testified that the Tenant is still occupying the rental unit and asked for an immediate order of possession.

The Notice to End Tenancy alleges that the Tenant owes \$660.96 in unpaid utilities. However, the Landlord did not include a claim for unpaid utilities in his Application for Dispute Resolution, nor did he apply for damages for loss of January's rent.

The Tenant agreed that he has not applied to dispute the Notice to End Tenancy. The Tenant stated that he always paid his rent on the second day of the month. The Tenant said that he and the Landlord had agreed that he could pay his rent on December 2, 2008.

The Landlord testified that he had agreed to accept the December rent on December 2, 2008, but that when he deposited the rent cheque on December 2nd it was returned to him "insufficient funds".

The Tenant testified that he has found new rental accommodation effective February 1, 2009.

Analysis

The Tenant was served with the Notice to End Tenancy on December 11, 2008, by personal service. The Tenant did not apply to dispute the Notice and is therefore conclusively presumed under section 46 of the Act to have accepted that the tenancy ended on the effective date of December 21, 2008. I therefore find that the Landlord is entitled to an immediate Order of Possession.

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

I find that the the Landlord has established a total monetary claim of \$850.00, for rent arrears for the month of December, 2008 and recovery of the filing fee.

I order that the Landlord retain the security deposit of \$400.00, together with accrued interest in the amount of \$4.46 in partial satisfaction of the claim leaving a balance due to the Landlord of \$445.54.

Conclusion

Under section 55 of the Act, and based on the above facts, the Landlord is entitled to an 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 \$445.54. 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 27, 2009
