



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPR, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent and loss of rent, and recovery of the filing fee. Both parties appeared at the hearing and had an opportunity to be heard and respond to the other party's submissions.

Issue(s) to be Decided

1. Whether the landlords are entitled to an Order of Possession and if so, the effective date of the Order of Possession.
2. Whether the landlords are entitled to a Monetary Order for unpaid rent and if so, the amount of the Monetary Order.
3. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony from the parties, I make the following findings with respect to the tenancy. The tenancy commenced in 2003 and the tenant is required to pay \$400.00 per month. The tenant did not pay a security deposit. The tenant continues to reside in the rental unit.

The landlord served a Notice to End Tenancy upon the tenant November 18, 2008. The landlord learned that the version of the Notice may have been outdated and issued the current version of a *10 Day Notice to End Tenancy for Unpaid Rent and Utilities* (the

Notice) by posting it on the tenant's door December 1, 2008. The Notice indicates an effective date of December 11, 2008 and outstanding rent of \$1,608.75 as of December 1, 2008.

In making the application for dispute resolution the landlord corrected a minor accounting error and is requesting compensation for unpaid rent of \$1,601.75 and loss of rent for January 2009 in the amount of \$400.00 since the tenant did not vacate the rental unit. The landlord provided a ledger of the rent owing and payments received in the year 2008. The ledger shows that the tenant last paid rent on November 27, 2008. The ledger indicates a \$700.00 carry forward balance. The landlord did not provide a ledger with respect to the carry forward balance; however, the landlord testified that she believed the balance related to the months of October and November 2007.

The tenant testified that she was out of town until December 5, 2008 and upon her return she received the Notice. The tenant testified that she did not dispute the Notice due to the snowfall, lack of a vehicle, lack of a telephone, and no money to file an application for dispute resolution. The tenant also cited personal difficulties related to a death in the family and her own health issues.

The tenant acknowledged that she had not paid a couple of month's rent, possibly a third month, but did not agree that she owed over \$2,000.00 as calculated by the landlord. The tenant was asked to review the payments recorded in the 2008 ledger and confirm its accuracy. The tenant indicated that the payments she made to the landlord in 2008 appeared to be accounted for; however, the tenant did not agree that she owed the carry forward balance of \$700.00. The tenant was of the position that she had improved the property significantly since her tenancy commenced and she had supplied the landlord with invoices showing that she had incurred \$800.00 to have a hot water tank installed. The tenant did not submit invoices as evidence for the hearing.

In response to the tenant's position, the landlord testified that the tenant's rent had been reduced in 2007 for the repairs the tenant had made; however, the landlord clarified that the tenant had not provided invoices.

The tenant also raised several issues related to the condition of the rental unit and stated that it should be condemned. Despite the unit's condition, the tenant clearly indicated she wished to remain in the rental unit until the spring as she is undergoing medical treatment and has pets and a teenage son to accommodate.

The tenant offered to pay the landlord \$800.00 in settlement of this dispute and agreed to move out in the spring. The tenant also offered to give the landlords the registration papers to her motorcycle as collateral. The landlords were of the position that they were entitled to over \$2,000.00 and that the tenant had been given many opportunities to pay the rent. A mutual agreement could not be reached between the parties; however, the landlord was willing to accept an Order of Possession effective February 1, 2009.

Analysis

Where a tenant is served with a Notice for unpaid rent, the tenant has five days from the deemed date of service to either pay the outstanding rent or dispute the Notice; otherwise, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date. I find that the form used by the landlord on December 1, 2008 to be valid and sufficiently served upon the tenant. Since the Notice was posted on December 1, 2008, the tenant is deemed to have received it December 4, 2008 and the tenant had until December 9, 2008 to dispute the Notice or pay the outstanding rent. The tenant did not pay anything towards the outstanding rent after the Notice was served upon her. Although the tenant cited reasons for not disputing the Notice within five days, I note that the tenant did not ever dispute the Notice and ask for more time to file a dispute. Nor did the tenant dispute the Notice to End Tenancy previously served

upon her in November. Ultimately, the tenant has the responsibility to dispute a Notice that has been sufficiently served if the tenant does not agree with the Notice and do so within the time limits imposed by the Act. The time the tenant had to dispute the Notice has now expired; however, I have considered each of the parties' testimony in determining the amount of rent owed by the tenant.

I find that the tenancy legally ended December 14, 2008 which is 10 days after the Notice was deemed to be served upon the tenant. Since the tenant continues to reside in the rental unit, the landlord is entitled to an Order of Possession. As the landlord was willing to accept an Order of Possession effective February 1, 2009, I provide an Order of Possession to the landlord with an effective date of February 1, 2009. The landlord may file the Order of Possession with the Supreme Court of British Columbia to enforce as an Order of that court.

Upon consideration of all the testimony and evidence before me, based on the balance of probabilities, I find the landlord's account of the rent owed by the tenant to be accurate and I award the landlord unpaid rent of \$1,601.75. As the tenant continues to reside in the rental unit, I also award the landlord \$400.00 for loss of rent for January 2009. As the landlord was successful with this application I grant the landlord's request for recovery of the filing fee. In light of these findings, I provide the landlord with a Monetary Order in the total amount of \$2,051.75 (\$1,601.75 + \$400.00 + \$50.00). To enforce payment, the landlord must serve the tenant with the Monetary Order and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

With respect to the tenant's position regarding the condition of the rental unit, where a tenant requires repairs to a rental unit and the landlord does not perform the necessary repairs, a tenant may seek remedy by making a Tenant's Application for Dispute Resolution. The tenant may also seek a rent reduction were appropriate; however, without the authorization for a rent reduction, a tenant is obligated to pay rent as

stipulated in the tenancy agreement. The tenant had not made an application for dispute resolution; therefore, I make no findings with respect to the condition of the rental unit and I make no award to authorize the tenant to reduce the rent owed.

Conclusion

The landlord was provided with an Order of Possession effective February 1, 2009. The landlord was provided with a Monetary Order in the amount of \$2,051.75.

January 13, 2009

Date of Decision

Dispute Resolution Officer