



Dispute Resolution Services

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

Decision

Dispute Codes: OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both the landlord's agent and the tenant participated in the teleconference hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Background and Evidence

The tenancy began on July 1, 2008. Rent in the amount of \$1029 is payable in advance on the first day of each month. On June 10, 2008, the landlord collected a security deposit from the tenant in the amount of \$504. The tenant failed to pay full rent in the month of December 2008 and on December 16, 2008 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant made some payment toward outstanding rent but still owed money for rent and a late fee as of December 31, 2008. The tenant did not make full payment of rent for January or February 2009. As of the date of the hearing, the tenant owed \$1101 in outstanding rent and late fees to the end of February 2009.

The tenant acknowledged that he received the notice to end tenancy on December 16, 2008, that he did not make full payment of the outstanding amount for December 2008 and that he still owed the amount the landlord claimed.

Analysis

I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant did not pay all of the outstanding rent within the required time frame or apply for dispute resolution to dispute the notice. In some instances, where the landlord accepts rent for the period after the effective date of the notice to end tenancy, the question will arise as to whether the landlord has reinstated the tenancy. The intent of the parties can be established by evidence as to whether the landlord issued a receipt or specifically informed the tenant that the money would be for use and occupancy only, and the conduct of the parties. I find in this case that the tenant did not make full payment of the amount owing for December 2008 by the end of that month and was aware that outstanding amounts were still owing, and therefore the tenant did not assume that the landlord had cancelled the notice and the tenancy was reinstated. The tenant is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an order of possession.

As for the monetary order, I find that the landlord has established a claim for \$1101 in unpaid rent. The landlord is also entitled to recovery of the \$50 filing fee, for a total claim of \$1151.

Conclusion

I grant the landlord an order of possession effective two days after service. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order that the landlord retain the deposit and interest of \$508.23 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$642.77. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated February 23, 2009.