



Dispute Resolution Services

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

Decision

Dispute Codes: OPR, MNR, MNSD, CNR, OLC, ERP, RP, FF

Introduction

This hearing dealt with two applications: 1) from the landlords for an order of possession, a monetary order in compensation for unpaid rent, retention of the security deposit in partial satisfaction of the claim, and recovery of the filing fee; 2) from the tenants for cancellation of the notice to end tenancy, orders requiring the landlord to comply with the Act and make repairs to the unit, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be Decided

- Whether the landlords are entitled to an order of possession, a monetary order under the Act, and recovery of the filing fee
- Whether the tenants are entitled to cancellation of the notice to end tenancy, certain orders against the landlord, and recovery of the filing fee

Background and Evidence

There is no record of a written residential tenancy agreement in this tenancy which the parties agree began approximately six years ago. Rent in the amount of \$850.00 and a fee for storage in the amount of \$50.00 are payable in advance on the first day of each month. A security deposit of \$425.00 was collected at the start of tenancy. There is no evidence of a move-in condition inspection or report having been completed.

The landlords' position is that rent over several months has not been paid in full. Accordingly, the landlords issued a 10 day notice to end tenancy for unpaid rent.

Subsequently, the tenants failed to pay the full amount of rent shown on the notice as outstanding in the amount of \$4,000.00. The landlords submitted into evidence a copy of the 10 day notice dated February 4, 2009 which was served in person on the tenants on that same date.

Several days following their receipt of the 10 day notice, the tenants filed their own application for dispute resolution. The submission from the tenants includes, but is not limited to, allegations related to the unit's state of disrepair, the occasionally unannounced arrivals of the landlords to the unit, as well as confusion and inconsistency related to payment of rent and issuance of receipts.

During the hearing the parties participated in a conversation in order to attempt to resolve some of the matters of dispute.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent. The tenants did not pay the outstanding rent and did not apply to dispute the notice within 5 days of receiving the notice. The tenants are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice which was February 15, 2009. Accordingly, I find that the landlords are entitled to an order of possession.

Aside from the matter of the order of possession, pursuant to section 63 of the Act, by way of their conversation during the hearing the parties reached a settlement of other aspects of their dispute. Specifically, the landlords agreed to waive any claim against the tenants for outstanding rent, and the tenants agreed to waive any claim against the landlords for the return of the security deposit.

I dismiss the respective applications from both parties for recovery of the filing fee.

Conclusion

I hereby issue an order of possession in favour of the landlords effective not later than **two (2) days** after service upon the tenants. This order must be served on the tenants. Should the tenants 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.

DATE: March 19, 2009

Dispute Resolution Officer