



Dispute Resolution Services

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

Decision

Dispute Codes: OPR, CNR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with two applications: 1) from the landlord for an order of possession, a monetary order in compensation for unpaid rent / loss of rental income, retention of the security deposit in partial satisfaction of the claim, and recovery of the filing fee, and 2) from the tenant(s) for cancellation of the notice to end tenancy and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony. While only one of the tenants participated in the hearing, I accept the landlord's affirmed testimony that the absent tenant was personally served with the application for dispute resolution and notice of hearing on March 11, 2009.

Issues to be Decided

- Whether the tenant(s) are entitled to cancellation of a notice to end tenancy and recovery of the filing fee
- Whether the landlord is entitled to an order of possession
- Whether the landlord is entitled to a monetary order under the Act

Background and Evidence

Pursuant to a written residential tenancy agreement, the fixed term of tenancy is from November 1, 2008 to May 31, 2009. Rent in the amount of \$1,600.00 is payable in advance on the first day of each month, and a security deposit of \$800.00 was collected on October 25, 2008. A move-in condition inspection and report were undertaken at the outset of tenancy.

The tenant(s) failed to pay all rent due on March 1, 2009. Specifically, only \$800.00 was paid. Accordingly, the landlord issued a 10 day notice to end tenancy for unpaid rent. Subsequently, the tenant(s) failed to pay the balance of rent due for March 2009 and failed to pay any of the rent due on April 1, 2009. Further, one of the two tenants has now vacated the unit while the other tenant remains in the unit.

A copy of the 10 day notice dated March 3, 2009 was submitted into evidence. The notice was slipped under the door of the unit on that same date.

During the hearing the parties engaged in a conversation with a view to resolving the dispute.

Analysis

Pursuant to section 63 of the Act, by way of discussion the parties reached a settlement of the dispute. Specifically, it was agreed as follows:

- that by no later than midnight, April 22, 2009, the tenant(s) will make payment to the landlord in the full amount of \$2,450.00. This amount is comprised of overdue rent for March of \$800.00, overdue rent for April of \$1,600.00 and the \$50.00 filing fee paid by landlord;
- that failure of the tenant(s) to make the payment in full, as above, will result in the landlord's service of an *order of possession* to be effective not later than two (2) days after service upon the tenant(s);
- that failure of the tenant(s) to make the payment in full, as above, will result in the landlord's service of a *monetary order* in the full amount of \$2,450.00;
- that, unless otherwise agreed between the parties, the tenant(s) will vacate the unit by April 30, 2009 (one month before expiration of the tenancy agreement) and the landlord will then undertake to re-rent the unit as soon as possible;

- that the landlord has the option of applying for dispute resolution in order to seek a monetary order for loss of rental income for May 2009 in the event the tenant(s) do vacate the unit by April 30, 2009, and no new renters are found effective from May 1, 2009;
- that the parties will complete a move-out condition inspection and report at the end of tenancy and also undertake at that time to reach agreement around the disposition of the security deposit.

Pursuant to all of the above, I hereby issue an order of possession in favour of the landlord.

Pursuant to all of the above, I hereby also grant the landlord a monetary order under section 67 of the Act for \$2,450.00.

Pursuant to all of the above, I dismiss the application from the tenant(s) for cancellation of the notice to end tenancy. Further, as the outcome of this hearing mainly favours the landlord, I dismiss the application from the tenant(s) for recovery of the filing fee.

Conclusion

I hereby issue an order of possession in favour of the landlord effective not later than **two (2) days** after service upon the tenant(s). This order must be served on the tenant(s). Should the tenant(s) 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 hereby grant the landlord a monetary order under section 67 of the Act for **\$2,450.00**. This order may be served on the tenant(s), filed in the Small Claims Court and enforced as an order of that Court.

DATE: April 17, 2009

Dispute Resolution Officer