

DECISION

Dispute Codes CNR & OPR MNR MNSD FF

Introduction

This hearing dealt with two applications. The first Application for Dispute Resolution is by the tenant to cancel a notice to end tenancy for unpaid rent.

The second Application for Dispute Resolution is by the landlord for an Order of Possession and a Monetary Order for unpaid rent, to retain the security deposit and interest in partial satisfaction of his claim, and to recover the filing fee from the tenant.

Service of the hearing documents, by the tenant to the landlord, was sent via registered mail on March 18, 2009. Mail receipt numbers were provided in the tenant's documentary evidence. The landlord was deemed to be served the hearing documents on March 23, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Service of the hearing documents, by the landlord to the tenant, was sent via registered mail on March 25, 2009. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on March 30, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both the landlord and tenant appeared, the landlord acknowledged receipt of evidence submitted by the tenant, both parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the tenant is entitled to an order to set aside a 10 Day Notice to End Tenancy
- Whether the landlord is entitled to an Order of Possession under Section 55 of the *Act* for unpaid rent
- Whether the landlord is entitled to a Monetary Order under section 67 of the *Act* for unpaid rent

Background and Evidence

The tenancy began as a fixed term tenancy effective December 1, 2007 and upon expiry of the fixed term on November 30, 2008, the tenancy converted to a month to month tenancy effective December 1, 2008. The current rent is \$700.00 payable on the first of each month and the tenant paid a security deposit of \$350.00 on December 1, 2007.

The landlord testified that a 10 Day Notice to End Tenancy was issued on March 4, 2009 and served to the tenant in person on March 4, 2009 at approximately 1:00 p.m., in front of the rental building in the presence of Witness (1). Witness (1) testified to this service.

The landlord stated that when he found he had issued the 10 Day Notice on an older form, he issued another 10 Day Notice to End Tenancy, on the newer form, on March 14, 2009. The landlord testified that the tenant refused to open the door when he tried to serve this second 10 Day Notice so he slid the notice under the door on March 14, 2009 at approximately 3:00 p.m. in the presence of Witness (2). Witness (2) testified to this service.

The landlord testified that when he found out that sliding the notice under the door was not a proper method of service, he issued a third 10 Day Notice to End Tenancy, on the

new form and posted it to the tenant's door on March 16, 2009 at approximately 2:30 p.m. in the presence of the Witness (1). Witness (1) testified to this service.

The landlord testified that the tenant has not paid March 2009 rent of \$700.00 nor has she paid the April 2009 rent of \$700.00 for a total rental arrears of \$1,400.00. The landlord is requesting an Order of Possession effective as soon as possible and a Monetary Order for the unpaid rent and the filing fee for this application.

The tenant testified that she did not apply for dispute resolution earlier because the Ministry of Child Welfare have not given her custody of her son, so now her monthly Social Assistance Cheque is only for a single person, which means she cannot afford to pay her rent. When asked how this prevented her from applying for Dispute Resolution sooner, the tenant could not answer.

The tenant testified that she has no way of paying the past rental arrears and has no income to pay future rent.

Analysis

Order of Possession

Section 66 of the *Residential Tenancy Act* allows for an extension to a time limit established by the *Act* but only in exceptional circumstance. The reasons given by the tenant on why she did not apply within the prescribed timeframes does not constitute exception circumstances and so I find that I cannot accept her application to cancel the notice to end tenancy and dismiss without leave to reapply.

There were three separate 10 Day Notice to End Tenancy forms issued from the landlord to the tenant. The first on an older version of an approved form dated March 4, 2009, the second on the current form dated March 14, 2009, and a third, on the current form, dated March 16, 2009. Section 10(2) of the *Residential Tenancy Act* stipulates that the director may approve forms which deviate from the approved form if they do not affect its substance and are not intended to mislead. Based on the foregoing I find that

service of the 10 Day Notice to End Tenancy was effected on March 4, 2009 when the tenant was served the first 10 Day Notice to End Tenancy in person.

I find that the landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the tenant failed to pay the rent within 5 days after receiving this notice, and that the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*.

Claim for unpaid rent

The landlord claims loss of rent of \$700.00 for March 2009 and \$700.00 for April 2009, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the tenant has failed to comply with a material term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. The tenant has testified that she has no means of acquiring the funds for any past or future rent. Based on the balance of probabilities that the landlord will not be able to rent the unit for any period in April 2009, I find in favor of the landlord's claim for both March and April 2009 rent.

Filing Fee \$50.00. I find that the landlord has succeeded in large and that he should recover the filing fee from the tenant.

Conclusion

I find that the landlord is entitled to an Order of Possession for which a formal order has been issued, effective 2 days upon service. This Order must be served on the tenants and is enforceable through the Supreme Court of British Columbia.

I find that the landlord is entitled to a Monetary Order, including recovery from the tenant of the filing fee for this proceeding as follows:

Unpaid Rent March and April 2009 @\$700.00 per month	\$1,4000.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	\$1,450.00
Less Security Deposit \$350.00 plus Interest \$5.71	-355.71
TOTAL MONETARY ORDER IN FAVOR OF THE LANDLORD	\$1,094.29

I hereby grant a Monetary Order of \$1,094.29 in favor of the landlord. This Order must be served on the respondent and is enforceable through the Provincial Court of British Columbia.

The landlord's copy of this decision is accompanied by the Order of Possession and the Monetary Order, both of which are required to be served on the tenant.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 24, 2009.

Dispute Resolution Officer