



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 CNR FF

Introduction

This hearing dealt with applications by the tenant and the landlord. The tenant applied to cancel a notice to end tenancy. The landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord named two tenants on their application and served notice of the hearing on both tenants by registered mail. However, one of the two tenants was not living in the rental unit by that time, and I therefore dismiss the landlord's application as against that tenant, and I have amended the style of cause to remove that tenant's name.

The tenant stated that he did not receive the landlord's evidence because he does not have a mailbox key and does not receive notices for registered mail. The landlord stated that the tenant gave his key back to the landlord. I accept the testimony of the landlord on this point, and I admit the landlord's documentary evidence.

The remaining tenant and two agents for the landlord initially participated in the teleconference hearing. Partway through the hearing the tenant decided to withdraw from the hearing, and the hearing continued without his participation. One other agent for the landlord and a witness for the landlord subsequently gave testimony in the hearing.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to the monetary amount claimed?

Background and Evidence

The tenancy began on March 4, 2009 as a fixed term tenancy to end on May 30, 2009, with monthly rent in the amount of \$2300. At the outset of the tenancy the tenant gave the landlord post-dated cheques, which were returned for insufficient funds. The landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant and the landlord agreed that the tenant did not pay a security deposit.

The evidence of the tenant was that on April 1, 2009, at approximately 7:45 pm, the landlord's agent, FT, attended at the rental unit and, in the presence of one of the tenant's friends, the tenant paid FT \$6900 in cash, representing the rent for March, April and May 2009. The tenant provided as supporting evidence a letter from his friend.

The evidence of the landlord was that the tenant did not pay any rent. The landlord's agent, FT, provided documentary evidence as well as testimony from his supervisor that he was at work on the evening of April 1, 2009. Another agent of the landlord, SM, stated that he represented the tenant's former landlord earlier in 2009, and in that tenancy the tenant made a nearly identical claim regarding payment of rent in cash, when in fact no rent was paid.

Analysis

In considering all of the evidence, I find that I prefer the evidence of the landlord as more credible. The tenant did not provide adequate credible evidence to establish that he paid the rent. I therefore find that the notice to end tenancy is valid. The landlord is entitled to an order of possession.

As for the monetary order, I find that the landlord has established a claim for \$6900 in unpaid rent. The landlord is also entitled to recovery of the \$100 filing fee.

Conclusion

The tenant's application is dismissed.

I grant the landlord an order of possession. 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 grant the landlord an order under section 67 for the balance due of \$7000. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated May 26, 2009.