



Dispute Resolution Services

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

Decision

Dispute Codes: OPR, CNR, MNR, 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, and recovery of the filing fee; and 2) from the tenant for cancellation of the notice to end tenancy. The tenant and the agent for the landlord participated in the hearing and gave affirmed testimony.

Issues to be Decided

- Whether the landlord is entitled to an order of possession
- Whether the landlord is entitled to a monetary order under the Act
- Whether the tenant is entitled to cancellation of notice to end tenancy for unpaid rent.

Background and Evidence

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began on April 6, 2005. Rent in the amount of \$1,200.00 is payable in advance on the first day of each month, and a security deposit of \$600.00 was collected at the start of tenancy.

Prior to this hearing, a hearing was convened on September 5, 2008 in a dispute between these same parties. Arising out of that hearing, and setting aside any consideration of the security deposit, the landlord established entitlement to \$10,900.00; this comprised \$10,800.00 for rent / loss of rental income and \$100.00 for the filing fee.

Subsequently, the parties entered into negotiations between them and in 2008 the tenant made three (3) payments totalling \$5,600.00 (\$1,200.00, \$2,400.00 &

\$2,000.00); and in 2009 the tenant made two (2) payments totalling \$6,000.00 (\$4,000.00 & \$2,000.00).

Analysis

Based on the documentary evidence and testimony of the parties, a summary of the landlord's entitlement to outstanding rent & filing fees is set out below.

Rent due in 2008 totals \$14,400.00 (12 x \$1,200.00). The total amount of rent actually paid in 2008 is \$5,600.00. This leaves a balance owed to the landlord of \$8,800.00 (\$14,400.00 - \$5,600.00), in addition to the \$100.00 filing fee for the dispute heard on September 5, 2008.

As for 2009, during this hearing the parties reached agreement that the tenant will vacate the rental premises effective no later than 1:00 p.m., Sunday, June 7, 2009. Accordingly, an order of possession will be issued to that effect.

Further, during this hearing the parties reached agreement that no rent or loss of rental income will be sought by the landlord for the month of June 2009. Arising from this, rent due in 2009 totals \$6,000.00 (5 x \$1,200.00). The total amount of rent actually paid in 2009 is \$6,000.00, leaving no rent outstanding for 2009.

For the sake of conceptual simplicity, rent still outstanding is therefore confined to 2008. Pursuant to the above information, the balance owed for 2008 is \$8,800.00. Added to this is the landlord's entitlement to the \$100.00 filing fee from the previous hearing and the \$100.00 filing fee for this hearing. The landlord has therefore established a claim in the total amount of \$9,000.00 (rent of \$8,800.00 for 2008, in addition to the filing fee of \$100.00 for the hearing held on September 5, 2008, and the filing fee of \$100.00 for this hearing).

Pursuant to discussion between the parties during this hearing, the security deposit of \$600.00 plus interest of \$21.25 (total: \$621.25) will be applied against the total amount

owed, and a monetary order will be issued for the balance of \$8,378.75
(\$9,000.00 - \$621.25).

Conclusion

I hereby issue an order of possession in favour of the landlord effective not later than **1:00 p.m., Sunday, June 7, 2009**. This order must be served on the tenant. 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 hereby grant the landlord a monetary order under section 67 of the Act for **\$8,378.75**. This order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: May 27, 2009

Dispute Resolution Officer