

DECISION

Dispute Codes CNR, MNR, MNSD, OPB, OPR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The Tenant applied to cancel a Notice to End Tenancy issued to him for unpaid rent. The Landlord applied for monetary orders for unpaid rent, to keep the security deposit, and for orders of possession based on unpaid rent and breach of the tenancy agreement.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issues(s) to be Decided

Is the Notice to End Tenancy for unpaid rent valid or should it be cancelled? Does the Tenant owe rent money to the Landlord?

Background and Evidence

The Landlord claims the Tenant did not pay the monthly rent of \$1,600.00 for February, June and July of 2009. The Landlord claims \$4,875.00 for three months rent, a fee of \$25.00 for an NSF cheque and \$50.00 for the filing fee for the Application.

The Tenant claims that he has paid the Landlord the February 2009, rent in cash, however, he did not receive a receipt for this amount. He agreed he did not pay rent for June of 2009, and testified he had sublet the unit while he was on holidays and the occupants did not pay him rent and the Landlord had these occupants removed. He claims he should not have to pay all the rent for June, as he was away for two weeks and did not use the rental unit during this time. He filed his claim against the Landlord to cancel the Notice to End Tenancy on June 16, 2009, then failed to pay his rent for July of 2009.

The Tenant further claims the Landlord illegally entered his unit to place paperwork there. The paperwork referred to was the Notices to End Tenancy and reminder notices about over due rent.

Analysis

Based on the affirmed testimony and evidence, and on a balance of probabilities, I find I must dismiss the Tenant's Application and allow the Landlord's Application in this matter.

The Landlord provided copies of receipts issued to the Tenant over the course of the tenancy, each time rent was paid. From the documentary evidence, I am persuaded that the Landlord kept good records of payments, and issued receipts in accordance with the Act, when rent was paid by the Tenant. I find I am more persuaded by the Landlord's evidence, than that of the Tenant, that the February rent was not paid.

I further find the Tenant failed to pay rent for June and July, based on his own testimony. A vacation away from the unit or loss of income from an illegal sub-let does not entitle the Tenant to not pay rent for the full month. He was in breach of the tenancy agreement by subletting the rental unit without the prior written consent of the Landlord. He failed to pay the July rent, despite knowing that he had a hearing in which his occupancy was a major issue.

I also find the Landlord, by slipping Notices under the Tenant's door, did not breach the Act or enter the unit without proper Notice. The Landlord served the documents in accordance with the Act. The Tenant had insufficient evidence the Landlord breached the entry provisions of the Act in this matter.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution.

I allow the Landlord's Application and grant an order of possession effective two days after service upon the Tenant. This order may be enforced through the Supreme Court of British Columbia.

I find that the Landlord has established a total monetary claim of **\$4,875.00** comprised of \$4,825.00 for three months of rent, an NSF fee and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit and interest of **\$805.15** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$4,069.85**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: July 24, 2009.

Dispute Resolution Officer