



Dispute Resolution Services

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

Decision

Dispute Codes: CNR LRE OPR MNR MNSD FF

Introduction

This hearing dealt with applications by the tenant and the landlord. The tenant applied to cancel a notice to end tenancy and an order suspending the landlord's right to enter the rental unit. The landlord applied for an order of possession and a monetary order for unpaid rent.

The landlord had also originally applied to keep the security deposit in partial compensation of his monetary claim; however, in the hearing the tenant stated that he had not paid any security deposit and the landlord did not dispute this. I therefore dismiss the portion of the landlord's application regarding the security deposit.

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 in October 2008. The rental unit is the upper portion of a house. The tenant's monthly rent is \$1150, and the tenant is responsible for all utilities for the house. The tenant sublets to two subtenants, one of whom, SB, pays the tenant \$550 in rent, and the other of whom, JM, pays the tenant \$600 in rent. The landlord was aware that the tenant was subletting, but before May 2009 the landlord was not aware of how much rent the tenant was charging his subtenants.

In May 2009 the tenant had a discussion with the landlord where the landlord agreed that the tenant would not have to pay the rent for May until a later date. At the end of May, the landlord discovered that the tenant had collected \$1150 from his subtenants for the month of May. At that time, the landlord entered into direct tenancy agreements with the two subtenants. The landlord collected \$550 in rent for June from SB, but JM had already paid her June rent to the tenant. On June 19, 2009 the landlord served the tenant with a 10 day notice to end tenancy for unpaid rent of \$1750. The tenant did not pay any of the outstanding rent and has paid no rent for July or August 2009.

The landlord's evidence was that the tenant is no longer a tenant and has no rights as a tenant, that he had promised to move out but has not done so, and that the landlord is entitled to an order of possession and a monetary order for the unpaid rent. The landlord collected rent directly from the two subtenants for July and August 2009.

The tenant's evidence was that the landlord had no right to interfere with the tenant's relationship with the subtenants, and the tenant had an agreement with the landlord regarding rent for May. Further, the landlord has been coming into the house without notice, and going through the tenant's personal possessions.

Analysis

When the landlord entered into direct tenancy agreements with the subtenants he was not acting in accordance with the *Residential Tenancy Act*. A landlord may not unilaterally make changes to a tenancy agreement without the tenant's consent, and a landlord may only end a tenancy in one of the ways set out under the Act. Further, even though the tenant had not paid rent and had been served with a notice to end tenancy, the landlord had no right to treat the tenancy as ended until he received an order pursuant to the notice to end tenancy. Therefore, the landlord still had an obligation to not enter the rental unit except as set out under the Act.

However, the landlord's improper actions do not render the notice to end tenancy invalid. The tenant owed \$1750 in rent, comprised of \$1150 for May 2009 and \$600 for

June 2009. The tenant did not have an agreement with the landlord regarding the time period in which he would pay the rent for May, and it was open to the landlord to pursue that amount as well as the outstanding \$600 for June by issuing the notice to end tenancy for unpaid rent. If the tenant had paid the full amount owing within 5 days of having received the notice, the notice would have been rendered invalid, and his tenancy would have continued. However, as the tenant did not pay the full amount owing within the required time frame, the tenant is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. I find that the notice to end tenancy is valid.

In regard to the monetary claim, the landlord is entitled to the unpaid rent of \$1750. The landlord applied for monetary compensation of \$4000, but he collected July and August's rent directly from the subtenants and did not enter into a new tenancy agreement with the tenant that specified how much rent the tenant would now pay. I therefore find that the landlord may not pursue any unpaid rent or lost revenue from the tenant for July or August 2009. The landlord is also entitled to recovery of the \$50 filing fee, for a total of \$1800.

Conclusion

The tenant's application is dismissed.

The landlord is entitled to 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 \$1800. This order may be filed in the Small Claims Court and enforced as an order of that Court.