



Dispute Resolution Services

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

Decision

Dispute Codes: OPR, MNR, CNR

Introduction

This hearing dealt with two applications: 1) from the landlord for an order of possession for unpaid rent, and a monetary order for unpaid rent, and 2) from one of the tenants for cancellation of the notice to end tenancy. The landlord and the male tenant participated in the hearing and gave affirmed testimony.

The landlord stated that he served the male tenant with the application for dispute resolution and notice of hearing for both, himself and the female tenant. However, the male tenant stated that the female tenant vacated the unit in October of 2008, and that he did not forward her copy of the landlord's application for dispute resolution and notice of hearing to her attention. Further, the male tenant stated that he did not know the details of the female tenant's current address.

Issues to be decided

- Whether the landlord is entitled to an order of possession and a monetary order for unpaid rent
- Whether the tenant(s) are entitled to cancellation of the notice to end tenancy

Background and Evidence

Pursuant to a written residential tenancy agreement, the term of the tenancy was from April 30, 2007 to April 30, 2008. Thereafter, tenancy has continued on a month-to-month basis. Rent in the amount of \$1,550.00 is payable on the first day of the month, and a security deposit of \$775.00 was collected on April 30, 2007.

Arising from what were only partial payments of rent over a period of months, the landlord issued a 10 day notice to end tenancy for unpaid rent dated July 6, 2009. The notice was served in person on the male tenant on that same date. A copy of the notice was submitted into evidence. Subsequently, the tenants made no further payments toward rent. While the male tenant stated that he did not necessarily agree with the landlord's calculations as to the amount of outstanding rent, he presented no alternate calculations.

During the hearing the landlord stated that he had no knowledge of the female's departure from the unit in October 2008, until this was reported during the hearing by the male tenant.

The landlord has calculated outstanding rent to be in the total amount of \$8,247.95. This is comprised of \$497.95 still owed for March 2009, and \$1,550.00 for each of the five (5) months from April to August 2009 which totals \$7,750.00.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the female tenant vacated the unit in October 2008. However, I also find that this information did not come to the landlord's attention until during the hearing. Arising from this, in regard to service of documents I refer to section 88 of the Act, which speaks to **How to give or serve documents generally**. In particular, section 88(e) provides:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in on of the following ways:

(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

On a balance of probabilities, I find that at the time when the landlord served the male tenant with the 10 day notice to end tenancy for unpaid rent, he was of the understanding that the male and female tenants were both still residents in the unit.

I find, therefore, that both tenants were served with a 10 day notice to end tenancy for unpaid rent dated July 6, 2009. The tenants did not pay the outstanding rent within 5 days of receiving the notice, although the male tenant applied to dispute the notice.

During the hearing the male tenant did not dispute that rent is still outstanding, however, he presented no calculations to dispute the total amount of outstanding rent as calculated by the landlord. In the result, I dismiss the tenant's application to cancel the landlord's notice to end tenancy for unpaid rent, and I find that the landlord is entitled to an order of possession. Both tenants are named on the order of possession.

As for the monetary order, once again, in the absence of any calculations presented by the tenant to the contrary, I find that the landlord has established a claim of \$8,247.95. This is comprised of unpaid rent over a total period of six (6) months as set out above. I therefore grant the landlord a monetary order under section 67 of the Act for \$8,247.95.

Again as to service of documents, section 89 of the Act speaks to **Special rules for certain documents**, and provides that an application by a landlord under section 55 of the Act for an order of possession must be served in ways which include "leaving a copy at the tenant's residence with an adult who apparently resides with the tenant."

However, where it concerns the landlord's application for a monetary order for unpaid rent, the application must be served by leaving a copy with the person, by sending a copy by registered mail at the address the person resides, by sending a copy by registered mail to a forwarding address provided by the tenant, or as ordered by the director under section 71(1) of the Act. In summary, where it concerns the landlord's application for a monetary order for unpaid rent, it is not sufficient that the landlord left the female tenant's copy of his application with the male tenant.

Pursuant to all of the above, only the male tenant is therefore named on the monetary order. The landlord has the option of filing for dispute resolution in order to seek a monetary order for unpaid rent to be served upon the female tenant, at such time as he may later become aware of her address. Further, however, in relation to the monetary order and the shared responsibility of tenants, Residential Tenancy Policy Guideline # 13 provides in part, as follows:

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

The landlord made no application to retain the security deposit or recover the filing fee.

Conclusion

Pursuant to all of the above, I hereby issue an order of possession in favour of the landlord effective not later than **two (2) days** after service upon the tenant(s). This order must be served on the tenant(s). Should the tenant(s) 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.

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$8,247.95**. This order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: August 28, 2009

Dispute Resolution Officer