



Dispute Resolution Services

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

Decision

Dispute Codes: ET / OPR, CNR, MNR, MNSD, FF

Introduction

This hearing dealt with two applications: 1) from the landlord for an early end to tenancy / order of possession, a monetary order for unpaid rent, retention of the security deposit, and recovery of the filing fee; and 2) from the tenant for cancellation of a notice to end tenancy, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

The tenant filed an application for dispute resolution on August 28, 2009, which led to another hearing being scheduled October 16, 2009. However, as both applications include a dispute around an order of possession, both applications were heard together in this hearing. Accordingly, the hearing scheduled October 16, 2009 will be cancelled.

Issues to be decided

- Whether either of the parties is entitled to any of the above

Background and Evidence

While there is no copy of the agreement before me in evidence, the parties testified that pursuant to a written residential tenancy agreement, the tenancy began on May 3, 2009. Rent in the amount of \$550.00 is payable on the first day of the month, and a security deposit of \$275.00 was collected on May 3, 2009.

The landlord testified that he issued a 10 day notice to end tenancy for unpaid rent dated August 11, 2009. He stated that the notice was served in person on the tenant on that same date, at which time the tenant tore it up. The landlord stated that he served another copy of the notice by posting on the tenant's door on that same date. A copy of the notice was submitted into evidence. Subsequently, the landlord stated that the tenant has paid no rent for the month of August or September 2009.

Documentary evidence submitted by the landlord includes letters from family members and neighbours which speak variously to concerns about the conduct and behaviour of the tenant and visitors to the unit. In summary, much of what has been documented speaks to the landlord's allegation that the tenant or persons permitted on the residential property by the tenant have seriously jeopardized the safety or a lawful right or interest of the landlord.

In his application the tenant asserts that he received the notice to end tenancy on August 25, 2009. Further, he acknowledges that his rent cheque for August "bounced" but that it was the result of "an entry error at income assistance." The tenant also claims that the landlord refused his subsequent offers to pay rent by cash or cheque. Despite this assertion, during the hearing the tenant testified that he had paid the rent for August and September 2009 in cash. He presented no witness testimony or written witness statements in support of this claim.

Analysis

Based on the documentary evidence and testimony of the parties, on a balance of probabilities I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated August 11, 2009. The tenant did not pay the outstanding rent and did not apply to dispute the notice within 5 days of receiving the notice, nor did the tenant apply for more time to make an application to cancel the notice. The tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice.

Further to the above, based on the documentary evidence and testimony of the parties, on a balance of probabilities I find that the landlord has proven there are grounds for ending the tenancy early. In this regard, section 56 of the Act addresses **Application for order ending tenancy early**, and provides in part, as follows:

56(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

In the result, I find that the landlord is entitled to an order of possession. The tenant's application for cancellation of the notice to end tenancy is dismissed.

As for the monetary order, I find that the landlord has established a claim of \$875.00. This is comprised of \$550.00 in unpaid rent for August 2009, \$275.00 for unpaid rent for the first half of September 2009, in addition to the \$50.00 filing fee. I order that the landlord retain the security deposit of \$275.00, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$600.00 (\$875.00 - \$275.00).

The tenant's application for recovery of the filing fee is dismissed.

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. 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.

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$600.00**. This order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: September 4, 2009

Dispute Resolution Officer