



Dispute Resolution Services

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

Decision

Dispute Codes: DRI CNR OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with a applications by the tenant and the landlord. The tenant applied to dispute an additional rent increase and to cancel a notice to end tenancy for unpaid rent. The landlord applied for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant and an agent for the landlord participated in the teleconference hearing.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to the monetary amounts claimed?

Did the landlord increase the rent beyond the prescribed amount?

Background and Evidence

The tenancy began on August 1, 2005. Rent is payable in advance on the first day of each month. As of August 1, 2009 the monthly rent was \$1296 plus parking. The tenancy agreement indicates the parking fee is \$40 and does not specify the number of parking spaces to which the tenant is entitled. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$580. The tenant's rent cheque for the month of August 2009 was returned for insufficient funds, and on August 11, 2009 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant further failed to pay rent in the months of September and October 2009. The landlord sought an order of possession pursuant to the notice to end tenancy, as well as a monetary order for the following amounts: \$1296 per month for the three months of August, September and October 2009 rent; \$105 per month for the

three months in question for three parking stalls; and \$20 for the NSF fee for the August 2009 rent cheque.

The response of the tenant to the landlord's claim was that he was unable to pay the rent because of a problem with his pension payments. The tenant chose to withdraw from the hearing before presenting evidence on his application regarding an additional rent increase.

Analysis

Based on the evidence I find that the tenant was served with a notice to end tenancy for non-payment of rent and did not pay the outstanding rent, and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an order of possession.

As for the monetary order, I find as follows. The landlord has established a claim for \$3888 in unpaid rent. In regard to the parking fees, the landlord did not provide any evidence of a written amendment to the parking fee of \$40 as set out in the tenancy agreement, and I therefore find that this portion of the landlord's claim is limited to the \$40 monthly amount for parking, for a total of \$120. The landlord is entitled to the \$20 claimed for the NSF fee, as per the tenancy agreement. The landlord is also entitled to recovery of the \$50 filing fee, for a total claim of \$4078.

The tenant did not present any evidence regarding an alleged rent increase beyond the prescribed amount, and I therefore dismiss that portion of the tenant's application.

Conclusion

The application of the tenant is dismissed. The tenant is not entitled to recovery of the filing fee for the cost of his application.

I grant the landlord an order of possession effective two days after service. 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 order that the landlord retain the deposit and interest of \$600.54 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$3477.46. This order may be filed in the Small Claims Court and enforced as an order of that Court.