

Decision

Dispute Codes: OPR, MNR, MNDC, MNSD, O, FF

Introduction

This hearing dealt with an application from the landlord for an order of possession, a monetary order as compensation for unpaid rent, compensation for damage or loss under the Act / regulation / tenancy agreement (fees for late payment of rent), retention of the security deposit, amendment of the 10 day notice to include tenant "BP," and recovery of the filing fee. Two agents for the landlord participated in the hearing and gave affirmed testimony. Despite being served by way of registered mail with the application for dispute resolution and notice of hearing, neither tenant appeared.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act

Background and Evidence

Pursuant to a written residential tenancy agreement, the fixed term of tenancy is from May 1, 2009 to April 30, 2010. Rent of \$800.00 is payable in advance on the first day of each month, and a security deposit of \$400.00 was collected on April 30, 2009.

Arising from rent which remained overdue on October 1, 2009, the landlord issued a 10 day notice to end tenancy for unpaid rent dated October 2, 2009. The notice was served by posting on the tenants' door on that same date. A copy of the notice was submitted into evidence and bears the name of one tenant, "RW." Subsequently, by way of ministry cheque, one half of rent due for October 2009 was paid in the amount of \$400.00, leaving an unpaid balance due of \$400.00.

As for rent due on November 1, 2009, two ministry cheques were paid to the landlord, each for \$400.00 and dated, respectively, November 1 and November 20, 2009.

Analysis

Based on the documentary evidence and undisputed testimony of the landlord's agents, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated October 2, 2009. The tenants did not pay the outstanding rent within 5 days of receiving the notice and did not apply to dispute the notice. The tenants are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlord is entitled to an order of possession.

As for the monetary order, I find that the landlord has established a claim of \$500.00. This is comprised of \$400.00 in unpaid rent for October 2009, late payment of rent fees in the total amount of \$50.00 for the months of October & November 2009 (2 x \$25.00), in addition to recovery of the \$50.00 filing fee. I order that the landlord retain the security deposit of \$400.00, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$100.00 (\$500.00 - \$400.00).

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 tenants. This order must be served on the tenants. Should the tenants fail to comply, 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 **\$100.00**. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: December 1, 2009

Dispute Resolution Officer