

DECISION

Dispute Codes: OPC, MNR, MNDC, CNR, RPP, LAT, MNSD and FF

Introduction

These applications were brought by both the landlord and the tenants.

By application of November 17, 2009, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served October 28, 2009. The landlord also sought a Monetary Order for unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed. The landlord also claimed compensation for tools and wood allegedly sold by the tenants but, as I have no evidence in support of that claim, and as the allegation is the subject of a police investigation, that part of the claim is dismissed.

By application of October 30, 2009, the tenants seek to have the Notice to End Tenancy set aside, an order for return of personal property, conditions on the landlord's right to enter the rental unit and authorization to change the locks.

Despite having made application and having been served with Notice of the Hearing, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, the tenants' application is dismissed without leave to reapply and the hearing proceeded in their absence.

Issues to be Decided

This matter requires a decision on whether the landlord is entitled to an Order of Possession in support of the Notice to End Tenancy and a Monetary Order for the unpaid rent and filing fee with authorization to retain the security deposit in set off against the balance owed.

Background and Evidence

During the hearing, the landlord's agent gave evidence that this tenancy began September 1, 2009, rent is \$600 per month and the landlord holds a security deposit of \$250 paid on October 1, 2009.

This matter is complicated by fact that the parties have accused each other of taking their personal property, the landlord alleges threatening by the tenants, and the tenants have alleged assault against the landlord's son, a matter that resulted in a bail order against the son. The parties have called police on each other on a number of occasions.

The landlord alleges that the tenants have not paid rent for September, October, November or December and that receipts submitted by the tenants are forged.

Analysis

I have examined the photocopied receipts submitted by the tenants and find that the detail was completed by the same hand that wrote the tenants' application which includes a very distinct printing of the tenants' names and cursive writing of amounts. The landlord's signature is in block printing, all capital letters, and would be very easy to duplicate.

The tenants have submitted a copy of an income assistance cheque dated October 5, 2009 identified as a security deposit, but submit receipts allegedly provided by the landlord for \$275 dated September 5, 2009 and \$100 dated August 20, 2009.

Another receipt indicates that the September rent was paid on August 27, 2009 (\$550 cash) and another that the October rent was paid on September 5, 2009. There are no receipts for November or December rent.

Analysis

I find on the balance of probabilities that the tenants have not paid rent for some or all of the time claimed by the landlord, that such was the case at the time the tenants were served with the Notice to End Tenancy and that the tenants did not make payment within the five days permitted under section 46(4) of the *Act* to extinguish the notice.

Therefore, I find that the landlord is entitled to an Order of Possession effective two days from service of it on the tenants.

However, given that the receipts submitted by the tenants are contested as forgeries by the landlord and are photocopies rather than originals , and given that they are incomplete with respect to November and December, I find that I cannot fairly assess the amount of the requested Monetary Order.

Therefore, I must dismiss the landlords' claim for a Monetary Order with leave to reapply with advice to the parties to submit original copies of any documentary evidence they submit in any future hearing on the subject. I find that the landlord is entitled to

recover the filing fee for this proceeding from the tenants and may do so by retaining \$50 from the tenants' security deposit.

Conclusion

1. As they did not appear, the tenants' application is dismissed without leave to reapply;
2. The landlord's monetary claims are dismissed with leave to reapply;
3. The landlord may retain \$50 of the security deposit in recovery the filing fee;
4. The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenants.