

Decision

Dispute Codes: OPR, MNR, FF

Introduction

This hearing dealt with an application from the landlord for an order of possession, a monetary order as compensation for unpaid rent, in addition to recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

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

Background and Evidence

There is no written residential tenancy agreement in evidence for this month-to-month tenancy which began approximately 30 years ago. The tenant held the position as resident manager since about February 2003. He testified that while, in recent time, monthly rent was \$535.00, in exchange for his duties as resident manager he received a concession in rent; in the result, his monthly rent was \$335.00. Rent is payable in advance on the first day of each month, and the tenant's recollection is that a security deposit in the amount of \$128.00 was collected about 30 years ago.

As the tenant's position as resident manager was terminated in early October 2009, the landlord informed him that effective November 1, 2009, his rent would be \$670.00. The landlord testified he considered that \$670.00 was fair market value, and that until the tenant testified during the hearing in regard to the amount of monthly rent, he had not been aware of details of the previous arrangement. The landlord stated he has been in his current role for only about 2 years.

Further to the dispute around rental arrears, the landlord identified a separate concern that the tenant had collected security deposits in the amount of \$500.00 from each of 2 other residents but had, to date, not paid these to the landlord.

As a result of unpaid rent over a period of several months, the landlord issued a 10 day notice to end tenancy for unpaid rent dated November 18, 2009. The notice was served by posting on the tenant's door on that same date. A copy of the notice was submitted into evidence. Subsequently, the tenant has made no payment towards rent and continues to reside in the unit.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated November 18, 2009. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply to dispute 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. Accordingly, I find the landlord is entitled to an order of possession.

During the hearing, the landlord indicated he is prepared to have the order of possession effective not later than 1:00 p.m., Sunday, January 31, 2010. Further, the landlord indicated he may be prepared not to enforce the order of possession in the event the tenant is able to pay all of the outstanding rent by January 31, 2010.

In the absence of any documentary evidence to the contrary, I find monthly rent after termination of the tenant's role as resident manager to be \$535.00, not \$670.00.

As for the monetary order, I find that the landlord has established a claim of \$3,665.00. This is comprised, in part, of unpaid rent as follows:

2008:

March – \$335.00; June - \$335.00; September - \$335.00;

October - \$335.00; December - \$335.00.

Sub-total: \$1,675.00.

2009:

July - \$335.00; November - \$535.00; December - \$535.00.

Sub-total: \$1,405.00.

2010:

January - **\$535.00**

Total overdue rent: \$3,615.00 (\$1,675.00 + \$1,405.00 + \$535.00)

As the landlord has succeeded in this application, I find that the landlord is also entitled to recover the \$50.00 filing fee. In summary, I grant the landlord a monetary order under section 67 of the Act for \$3,665.00 (\$3,615.00 + \$50.00).

Conclusion

Pursuant to the above, I hereby issue an order of possession in favour of the landlord effective not later than **1:00 p.m., Sunday, January 31, 2010.** 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 **\$3,665.00.** Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: January 11, 2010

Dispute Resolution Officer