

Decision

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

Introduction

This hearing dealt with two applications: 1) from the landlords for an order of possession for cause, a monetary order as compensation for unpaid rent and utilities / compensation for damage or loss under the Act, regulation or tenancy agreement, and recovery of the filing fee; 2) from the tenant for cancellation of the landlord's notice to end tenancy for cause and for unpaid rent or utilities, a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, an order instructing the landlord to comply with the Act, regulation or tenancy agreement / to make emergency repairs for health or safety reasons, an order suspending or setting conditions on the landlord's right to enter the unit, and recovery of the filing fee.

Both parties participated in the hearing and gave affirmed testimony. While the parties made progress in resolving certain aspects of their dispute in the early stages of the hearing, they increasingly became argumentative and spoke over one another.

Issues to be decided

- Whether either party 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 August 15, 2009 to August 15, 2010. Rent in the amount of \$1,300.00 is payable in advance on the first day of each month. The landlords claim that while the tenant issued a cheque in the amount of \$650.00 for a security deposit near the outset of tenancy, the cheque did not clear.

Arising from the landlords' concern that the tenant had sublet the unit without the landlords' written consent, the landlords issued a 1 month notice to end tenancy for cause dated December 11, 2009.

Following this, with respect to allegedly unpaid utilities the landlords issued a 10 day notice for unpaid rent or utilities dated December 17, 2009. The tenant claims she paid her share of utilities.

As to rent, while the landlords assert that the tenant paid no rent whatsoever for the month of January 2010, the tenant claims she made a cash payment to landlord "PG" on December 12, 2009 in the amount of \$2,600.00, which included the advance payment of January's rent. The tenant states that, despite her request, the landlord provided no receipt for this payment. Evidence submitted by the tenant includes a copy of a letter from a person who claims to have witnessed the tenant pay "\$500.00" in cash "towards utilities" to landlord "PG" in December 2009.

The landlords assert that the tenant's claim of having made a cash payment in the amount of \$2,600.00 is preposterous, and their evidence includes copies of receipts previously issued to the tenant for payment of rent.

As earlier stated, during the early stages of the hearing the parties undertook to achieve at least a partial resolution of the dispute.

Analysis

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a partial resolution. Specifically, it was agreed as follows:

- that the tenant will vacate the unit by no later than *1:00 p.m., January 31, 2010*, and that an *order of possession* will be issued in favour of the landlords to that effect;

- that the landlords withdraw the aspect of their application concerning unpaid utilities.

The outstanding issue in dispute concerns rent for January 2010. Arising out of the agreement between the parties that tenancy would end effective January 31, 2010, the landlords offered to resolve the matter of unpaid rent by settling for payment for one half month's rent in the amount of \$650.00. For her part, however, the tenant insists that she paid all rent due for January 2010.

Based on the documentary evidence and testimony of the parties, on a balance of probabilities I find it unlikely that the tenant made a cash payment of \$2,600.00 to landlord "PG" in December, which the tenant claims included the advance payment of rent for January 2010. In view of rent receipts that were previously issued to the tenant, I must conclude that a receipt would also have been issued in the event the landlords received a cash payment, as above. However, there is no such receipt in evidence.

I therefore prefer the testimony of the landlords on this point and I find they have established a claim of \$650.00, which is comprised of one half month's rent for January 2010.

As the parties achieved some progress in resolving the dispute between them, I hereby dismiss their respective applications to recover the filing fee.

Conclusion

Pursuant to all of the above, I hereby issue an order of possession in favour of the landlords effective not later than **1:00 p.m., 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 landlords in the amount of **\$650.00**. This order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: January 22, 2010

Dispute Resolution Officer