

Decision

Dispute Codes: OPR / OPB, MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an application from the landlords for an order of possession, a monetary order as compensation for unpaid rent or utilities, compensation for damage to the unit, compensation for damage or loss under the Act, regulation or tenancy agreement, retention of the security deposit, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlords are entitled to any or all of the above under the Act

Background and Evidence

There is no written residential tenancy agreement in place for this month-to-month tenancy which began on March 1, 2009. Rent in the amount of \$750.00 is payable in advance on the first day of each month. A security deposit of \$375.00 was collected on or about March 15, 2009.

Arising from rent which was unpaid when due on January 1, 2010, the landlords issued a 10 day notice to end tenancy for unpaid rent dated January 7, 2010. The notice was served in person on the tenants on that same date. A copy of the notice was submitted into evidence. Subsequently, tenant "PAM" claims she paid \$375.00 in cash to landlord "JW" on January 9, 2010. Tenant "MC" claims he was a witness to that payment which took place while landlord "JW" was in the rental unit. While tenant "PAM" claims to have been given a receipt for this cash payment, no copy of such a receipt is before me in evidence. Further, tenant "PAM" testified that the parties reached an agreement whereby the landlords would retain the security deposit as payment for the balance of January's rent.

However, landlord "JW" disputes that she received a cash payment for half of January's rent or that an agreement was reached concerning the landlords' withholding of the security deposit for the balance of January's rent.

Tenant "PAM" states it is their intention to vacate the unit at the end of January 2010, and claims that they were unable to find alternative accommodation by the end of December 2009 as earlier anticipated.

As for the landlords' claim that utilities are outstanding in the amount of \$32.21, there is no documentary evidence before me to support this claim.

Neither is there any documentary evidence before me to support the landlords' claim that certain costs have or will be incurred for repairs to damage of the unit and removal of rubbish / garbage.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated January 7, 2010. The tenants did not pay the full amount of 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 landlords are entitled to an order of possession.

In regard to January's rent, as previously noted, there is no documentary evidence before me, such as a receipt for example, to support the tenants' claim that half a month's rent in the amount of \$375.00 was paid in cash to the landlord on January 9, 2010.

As for the monetary order, therefore, I find that the landlords have established a claim of \$800.00. This is comprised of \$750.00 in unpaid rent for the month of January 2010, in addition to the \$50.00 filing fee. I order that the landlords may retain the security

deposit of \$375.00 in partial satisfaction of the claim and I grant the landlords a monetary order under section 67 of the Act for the balance due of \$425.00 (\$800.00 - \$375.00).

In the absence of sufficient evidence to support the landlords' claim for a monetary order as compensation for \$32.21 in unpaid utilities, I hereby dismiss that aspect of the landlord's claim.

There is no evidence before me or particular costs identified in the landlords' application for a monetary order as compensation for repairs to various damage to the unit and removal of rubbish / garbage. This aspect of the landlords' claim is therefore dismissed with leave to reapply.

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., Sunday, January 31, 2010.** This order must be served on the tenants. Should the tenants 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 **\$425.00**. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: January 20, 2010

Dispute Resolution Officer