



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, RP, OPR, MNR, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and an order that the landlord perform repairs in the rental unit. The landlord made a cross-application requesting an order of possession and a monetary order. Both parties participated in the conference call hearing on both the original date and the second date on which the hearing was reconvened.

At the hearing the landlord asked to amend their application to include a claim for loss of income for the months of January and February. I allow the amendment as I find that the tenant should be aware that the landlord cannot re-rent the unit while he is residing therein and that the landlord should be entitled to occupational rent for any period of time in which he occupies the unit.

Issues(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenant was obligated to pay \$1,800.00 in rent in advance on the first day of each month. The parties further agreed that the tenant did not pay rent in the month of December and that on December 8 the tenant received a 10-day notice

to end tenancy for unpaid rent. The parties further agreed that the tenant did not pay any rent in the month of January.

The hearing was originally set for January 25 at which time the parties agreed that it should be reconvened on the afternoon of January 29. The tenant told the landlord that he would be able to pay all arrears in addition to rent for February in the morning of January 29 and the landlord agreed that if the tenant were to do so, they would agree to extend the tenancy to the end of February. When the hearing reconvened the parties agreed that the tenant had not made the payment.

Analysis

The *Residential Tenancy Act* does not permit tenants to withhold rent without an order from a dispute resolution officer permitting them to do so. The tenant has acknowledged that he received the notice to end tenancy and further acknowledged that he did not pay the rental arrears within 5 days of having received the notice. Under section 46(5) of the Act the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an order of possession. The tenant must be served with the order of possession. 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. The landlord asked that the order be made effective 2 days after service and the tenant asked for more time to permit him to move his belongings. As the tenant is now two months in arrears and as the tenant has already been given an additional 4 days by the landlord having agreed to delay the hearing to give him time to pay the arrears, I find that it would be highly prejudicial to the landlord to extend the effective date of the order. The order will be effective 2 days after service upon the tenant.

I find that the landlord is entitled to recover unpaid rent for each of the months of December and January as well as late payment fees of \$25.00 for each of those months and is therefore awarded \$3,650.00. I further find that as the landlord will be unable to re-rent the unit for February 1, the landlord is entitled to recover loss of income for the

first half of February and I award the landlord a further \$900.00. If the landlord is unable to re-rent the unit for mid-February, the landlord has leave to reapply for further loss of income for the remainder of that month. The landlord is also entitled to recover the cost of the filing fee paid to bring this application and I award the landlord a further \$50.00 for a total award of \$4,600.00. I grant the landlord an order under section 67 for \$4,600.00. This order may be filed in the Small Claims division of the Provincial Court and enforced as an order of that Court.

The tenant's claim is dismissed in its entirety.

Conclusion

The tenant's claim is dismissed. The landlord is granted an order of possession and a monetary order for \$4,600.00.

Dated: January 29, 2010
