

Decision

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application from the landlord for an order of possession, a monetary order as compensation for unpaid rent, retention of the security deposit, and recovery of the filing fee. Despite being served by way of registered mail with the application for dispute resolution and notice of hearing, the tenant(s) did not appear.

Issues to be decided

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

Background and Evidence

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began on August 26, 2009. Rent in the amount of \$895.00 is payable in advance on the first day of each month. A security deposit of \$447.50 was collected on August 26, 2009.

Arising from rent and utilities which remained overdue on December 1, 2009, the landlord issued a 10 day notice to end tenancy for unpaid rent or utilities dated December 2, 2009. Specifically, rent of \$305.00 remained overdue for November 2009, rent of \$895.00 remained overdue for December 2009, and utilities (gas) remained overdue for November 2009 in the amount of \$124.00.

The 10 day notice was served in person on the tenant's partner, who is also a tenant in the unit, on December 2, 2009. A copy of the notice was submitted into evidence. Subsequently, the tenant(s) made only limited payment toward rent in the amount of \$600.00 on January 28, 2010, and the tenant(s) continue to reside in the unit.

In summary, the total amount of overdue rent and utilities being claimed by the landlord is as follows:

\$305.00 – rent November 2009

\$895.00 – rent December 2009

\$895.00 – rent January 2010

\$895.00 – rent February 2010

\$124.00 – utilities November 2009

Total: \$3,114.00

After applying a credit of \$600.00 in favour of the tenant(s) against the above amount, the total amount of rent and utilities claimed by the landlord is \$2,514.00 (\$3,114.00 - \$600.00).

Analysis

Based on the documentary evidence and undisputed testimony of the landlord, I find that the tenant(s) were served with a 10 day notice to end tenancy for unpaid rent or utilities dated December 2, 2009. The tenant(s) did not pay the full amount of outstanding rent or utilities within 5 days of receiving the notice and did not apply to dispute the notice. The tenant(s) 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 landlord is entitled to an order of possession.

As for the monetary order, I find that the landlord has established a claim of \$2,564.00. This is comprised of \$2,514.00 in unpaid rent and utilities as above, in addition to the \$50.00 filing fee. I order that the landlord retain the security deposit of \$447.50, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$2,116.50 (\$2,564.00 - \$447.50).

Conclusion

Pursuant to all of the above, I hereby issue an order of possession in favour of the landlord effective not later than **two (2) days** after service upon the tenant(s). This order must be served on the tenant(s). Should the tenant(s) 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 **\$2,116.50**. This order may be served on the tenant(s), filed in the Small Claims Court and enforced as an order of that Court.

DATE: February 9, 2010

Dispute Resolution Officer