

Decision

Dispute Codes: OPR, CNR, MNR, MND, MNSD, FF

Introduction

This hearing dealt with two applications: 1) from the landlord for an order of possession for unpaid rent, a monetary order as compensation for unpaid rent, damage to the unit, retention of the security deposit, and recovery of the filing fee; 2) from the tenants for cancellation of the notice to end tenancy for unpaid rent, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether either party is 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 September 1, 2006. Rent in the amount of \$1,300.00 is payable in advance on the first day of each month. A security deposit of \$650.00 was collected on September 1, 2006.

Arising from rent which was unpaid when due on December 1, 2009, the landlord issued a 10 day notice to end tenancy for unpaid rent dated December 23, 2009. The notice was served in person on the tenants on December 24, 2009. A copy of the notice was submitted into evidence. Subsequently, the tenants have made no payments toward rent and vacated the unit on or about December 31, 2009. However, the tenants have not yet removed all of their possessions from the unit / property.

The landlord seeks an order of possession for unpaid rent, a monetary order for unpaid rent for December 2009 and January & February 2010, compensation for costs arising from local fire service attendance to a fire at the unit caused by the activities of the

tenants, a related dryer kit, retention of the full security deposit and recovery of the \$100.00 filing fee.

As they have now vacated the unit, the tenants no longer seek cancellation of the notice to end tenancy. However, should the landlord succeed in the application for an order of possession, the tenants requested a delay in service so they have more time to remove their possessions from the unit / property. The tenants do not dispute that their actions led to a fire in the unit which resulted in fire / water damage and attendance by the local government fire service. Finally, the tenants seek to recover the \$50.00 filing fee.

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 December 23, 2009. The tenants did not pay the outstanding rent within 5 days of receiving the notice. While the tenants filed for dispute resolution within 5 days of their receipt of the notice, they do not dispute that rent is outstanding from December 1, 2009 to the present. 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 \$3,967.87. This is comprised of \$3,250.00 in total unpaid rent for December 2009 (\$1,300.00), January (\$1,300.00), and February 1 – 15, 2010 (\$650.00), \$593.25 for fire services arising from the tenants' actions, \$24.62 for the related expense of a dryer kit, in addition to the \$100.00 filing fee. I order that the landlord retain the security deposit of \$650.00 plus interest of \$20.80, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$3,297.07 (\$3,967.87 - \$670.80).

In regard to other miscellaneous costs identified by the landlord during the hearing, which have either already been incurred or are anticipated, after taking possession of the unit the landlord has the option of further applying for a monetary order.

Following from all of the above, the tenants' application is hereby dismissed.

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 tenants. 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 landlord in the amount of **\$3,297.07**. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: February 3, 2010

Dispute Resolution Officer