

Decision

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. It is apparent from documents included with the Application for Dispute Resolution that the Landlord is also seeking an Order of Possession for Cause, and the Application was amended accordingly.

The Landlord stated he personally served copies of the Application for Dispute Resolution and Notice of Hearing to the Tenant on January 13, 2009. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession, to a monetary Order for unpaid rent, and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Act*.

Background and Evidence

The Landlord stated that this tenancy began on October 01, 2008 and that the Tenants are required to pay monthly rent of \$700.00.

The Landlord stated that a Ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of December 12, 2008, was personally served on the Tenants on December 02, 2008. The Notice indicated that the Notice would be automatically cancelled if the Tenants paid the outstanding rent within five days of the date they are deemed to have received the Notice. The Landlord stated that the Tenants did pay their outstanding rent within five days of being served the ten day Notice to End Tenancy.

The Landlord stated that a One Month Notice to End Tenancy for Cause was served on the Tenants on December 29, 2008, a copy of which was submitted in evidence. The One Month Notice to End Tenancy that was submitted in evidence was not signed by the Landlord, although the Landlord insists that the copy in his possession is signed.

The Landlord stated that the Tenants still owe \$350.00 in rent from February of 2009.

Analysis

In the absence of evidence to the contrary, I find that the Tenants were served with a Ten Day Notice to End Tenancy for Unpaid Rent on December 02, 2008, pursuant to section 46 of the *Act*. Section 46(4) of the *Act* stipulates that the Notice to End Tenancy has no effect if the tenant pays the overdue rent within five (5) days from the date of receiving the Notice to End Tenancy. The evidence shows that the Tenants did pay their rent within five days of receiving the Ten Day Notice to End Tenancy, therefore I find that the Notice has no effect. On this basis, I dismiss the Landlord's application for an Order of Possession for unpaid rent.

In the absence of evidence to the contrary, I find that the Tenants were served with a One Month Notice to End Tenancy for Cause on December 29, 2009, pursuant to section 47 of the *Act*. I find that the One Month Notice to End Tenancy was not signed by the Landlord. In spite of the Landlord's insistence that he did sign the Notice to End Tenancy, I find the best evidence is the physical evidence that was submitted, which is an unsigned One Month Notice to End Tenancy.

Section 47(3) of the *Act* stipulates that a notice to end tenancy under this section must comply with section 52 of the *Act*. Section 52(a) of the *Act* stipulates that to be effective a notice to end tenancy must be signed and dated by the landlord or the tenant giving the notice. I find that the One Month Notice to End Tenancy that was served by the Landlord is not effective, as the Landlord did not comply with section 52(a) of the *Act* when he served an unsigned One Month Notice to End Tenancy. On this basis, I dismiss the Landlord's application for an Order of Possession for cause.

In the absence of evidence to the contrary, I find that the Tenants have not paid rent in the amount of \$350.00 for February of 2009, and that the Landlord is entitled to compensation in that amount.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$400.00, compensation for the filing fee paid by the Landlord for this Application which is comprised on \$350.00 in unpaid rent and \$50.00 in for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$400.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.