

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. The Landlord inadvertently made application for an Order of Possession for Cause, however that portion of the application was withdrawn at the hearing.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the address noted on the Application, on January 19, 2009. A tracking number was provided. The Canada Post website shows the mail was delivered on January 20, 2009.

The Landlord stated that he was advised by people occupying the rental unit that they are renting the rental unit from the Tenant. They advised him that the Tenant is not residing at the rental unit. The Landlord stated that the Tenant has not ended the tenancy and has never advised the Landlord that he is no longer residing at the rental unit.

I find that the Application for Dispute Resolution and Notice of Hearing were sufficiently served on the Landlord for the purposes of the Residential Tenancy Act (Act), pursuant to section 71(2)(b) of the Act when he sent it by registered mail to rental unit. In reaching this conclusion I concluded that it was reasonable for the Landlord to assume that the Tenant is still residing at the rental unit, since the Tenant has never advised the Landlord that he is not living at the rental unit nor has he provided the Landlord with a forwarding address. I also determined that the documents were sent to the address at which the Tenant is carrying on business as a landlord in the event he is subletting the rental unit.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; 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 55, 67, and 72 of the *Act*.

Background and Evidence

The Landlord submitted a copy of a tenancy agreement that shows the Tenant entered into a fixed term tenancy agreement that was to begin on July 03, 2008 and end on July 02, 2009, at which time it would revert to a month to month tenancy. The tenancy agreement shows that the Tenant was required to pay monthly rent of \$2000.00.

The Landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of November 07, 2008 was personally served on a person he located at the rental unit who advised the Landlord that he was renting the rental unit from the Tenant. The Notice indicated that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental by the date set out in the Notice unless the Tenant pays the outstanding rent or files an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice.

The Landlord stated that the Tenant has not paid any rent for October, November, or December of 2008. The Landlord stated that the Tenant has not paid any rent for January or February of 2009.

Analysis

In the absence of evidence to the contrary, I find that the Landlord personally served a Notice to End Tenancy, issued pursuant to section 46 of the *Act*, on a person who indicated that she was residing at the rental unit on November 07, 2008.

I find that the Notice to End Tenancy was sufficiently served on the Landlord for the purposes of the *Act*, pursuant to section 71(2)(b) of the *Act* when he personally served it on an adult residing at the rental unit. In reaching this conclusion I concluded that it was reasonable for the Landlord to assume that the Tenant is still residing at the rental unit, since the Tenant has never advised the Landlord that he is not living at the rental unit nor has he provided the Landlord with a forwarding address.

Section 46 of the *Act* stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I

will grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant.

In the absence of evidence to the contrary, I find that the Tenant has not paid rent for October of 2008. November of 2008; December of 2008; January of 2009; and February of 2009. I therefore find that the Tenant owes the Landlord \$10,000.00 for unpaid rent.

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

Conclusion

The Landlord has been granted an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$10,100.00, which is comprised on \$10,000.00 in unpaid rent and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$10,100.00. 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.

Date of Decision: February 24, 2009
