

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, a monetary Order for money owed or for compensation for damage or loss, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

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 *Residential Tenancy Act (Act)*.

Background and Evidence

The Agent for the Landlord and the Tenant agree that the Tenant is required to pay monthly rent of \$1,500.00.

The Agent for the Landlord and the Tenant agree that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of January 16, 2009, was served on the Tenant on January 06, 2009. 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 Agent for the Landlord and the Tenant agree that the Tenant did not pay \$200.00 in rent from October of 2008; \$200.00 in rent from November of 2008; \$490.00 in rent from December of 2008; and \$1,500.00 in rent from January of 2009. The parties also agree that the Tenant did pay \$280.00 in rent on February 02, 2009 and \$600.00 in rent on February 5, 2009, but that she still owes \$620.00 in rent from February.

The Agent for the Landlord and the Tenant agree that the ceiling and cupboards in the laundry room were damaged by water. The Tenant stated that the Landlord agreed that she would not be required to pay the outstanding rent from October and November if she repaired the ceiling in the laundry room. The Tenant stated that the Landlord agreed that she would not be required to pay the outstanding rent from December if she repaired the cupboards in the laundry room. She stated the ceiling and the cupboards have been repaired, although the cupboards have not yet been mounted to the wall.

The Agent for the Landlord stated that the parties had not reached an agreement on reimbursement in regards to the cupboards and the laundry room ceiling. She stated that it was her understanding that they would discuss payment once the repairs were complete. As the repairs have not been fully completed, they have not discussed how the Tenants will be compensated for their labour.

The Landlord and the Tenant agree that they did not have a written agreement regarding the repairs to the laundry room.

Analysis

The evidence shows that the Tenant was served with a Notice to End Tenancy that required the Tenant to vacate the rental unit on January 16, 2009, pursuant to section 46 of the *Act*.

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. I specifically note that the Tenant did not pay any of the outstanding rent that the Landlord contends was due from October, November and December. I further note that the Tenant did not pay any of the rent that she acknowledges was outstanding from January of 2009. On this basis I will grant the Landlord an Order of Possession that is effective on February 28, 2009.

After hearing the contradictory evidence in regards to repairs to be done in exchange for reduced rent, I find that the Tenant submitted insufficient evidence to show that the Landlord agreed to reduce her rent for October, November and December of 2008. In reaching this conclusion I was guided by the basic legal principle that places the burden

of proving a fact on the person who alleges it and not upon the person who denies it. In these circumstances the onus was on the Tenant to prove that the Landlord had agreed to reduce her rent. As the Tenant has failed to show that there was an agreement to reduce her rent, I find that the Tenant still owes \$200.00 in rent from October, \$200.00 in rent from November and \$490.00 in rent from December.

As the Tenant agrees that she has not paid all of her rent for January, I find that the Tenant still owes \$1,500.00 in rent for January of 2009.

As the Tenant agrees that she has not paid \$620.00 in rent from February, I find that she still owes \$620.00 in rent for February of 2009.

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 at 1:00 p.m. on February 28, 2009. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court if the Landlord wishes to enforce the Order.

I find that the Landlord has established a monetary claim, in the amount of \$3,060.00, which is comprised of \$3,010.00 and \$50.00 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 \$3,060.00. 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 23, 2009
