



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNR, MNSD, OPR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties were represented at the conference call hearing and had opportunity to be heard.

In this decision where the word tenant is used in the singular it refers to the tenant N.W. who testified at the hearing and where it is used in the plural it refers to both of the tenants, who were represented by N.W. at the hearing.

Issues(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on April 1, 2009 and is set for a fixed term to expire on March 31, 2010. The parties further agreed that rent was set at \$1,500.00 per month, payable in advance on the first day of each month. The tenant claimed that he paid an \$860.00 security deposit and the landlord claimed that the tenant paid an \$800.00 security deposit. The parties further agreed that on December 17 the tenant was served with a 10-day notice to end tenancy for unpaid rent (the "Notice").

The landlord testified that the tenants failed to pay rent in the month of December. The parties agreed that the tenants were permitted to deduct \$50.00 from their rent for the month of December pursuant to an order from this Branch. The landlord seeks an order of possession based on the Notice and a monetary order for unpaid rent for December and loss of income for January as well as recovery of the filing fee paid to bring this application.

The tenant testified that he paid his rent by way of post-dated cheques which were sent to the landlord's agent via registered mail. The landlord's agent denied having received the cheques. At the hearing the tenant was instructed to provide to both the Residential Tenancy Branch and to the landlord's agent the receipt from Canada Post for the registered mail by the end of the business day on February 4. The tenant indicated that he could easily provide that evidence via fax and was provided with fax numbers both for the Branch and the landlord's agent. The tenant claimed that he had a cancelled cheque showing that he paid \$860.00 for a security deposit and was instructed to fax a copy of the cheque to both the Branch and the landlord's agent together with the registered mail receipt. The tenant did not provide this evidence as instructed.

Analysis

When the landlord makes an allegation that rent has not been paid, the burden shifts to the tenants to prove that rent has indeed been paid. Despite having been given opportunity to provide evidence that rent had been paid or at least that an attempt had been made to pay the rent, the tenants failed to provide any such evidence although they claimed that it existed. I find that the tenants have failed to meet their burden. I find that the tenants were served with the Notice and find that they failed to cancel that Notice by paying the rent within 5 days of receipt of the Notice. The tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an order of possession. The tenants must be served with the order of possession. 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.

As for the monetary order, I find that the landlord has established a claim for \$1,450.00 in unpaid rent for December and \$1,500.00 in loss of income for January. The landlord is also entitled to recovery of the \$50.00 filing fee. I am unable to determine the amount of the security deposit and therefore make no deduction to the award, but note that the landlord is entitled under section 72(2)(b) of the Act the landlord is permitted to apply the security deposit to a monetary order. I grant the landlord an order under section 67 for \$3,000.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$3,000.00.

Dated: February 05, 2010
