

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with an application by the landlord for an Order of Possession for unpaid rent and a monetary order for unpaid rent. Both parties attended the hearing and gave affirmed testimony.

At the outset of the hearing, it was determined that the tenant's name was spelled incorrectly in the Dispute Resolution documents, and an amendment was made to correct the spelling.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on November 15, 2009. Rent in the amount of \$1,200.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$600.00. The tenant failed to pay rent in full in the months of January and February, 2010 and on February 6, 2010 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the residence. The tenant further failed to pay rent in the month of March, 2010.

After testimony by both parties, it's agreed that the notice issued to the tenant stated that the amount outstanding was \$2,400.00 for rent that was due on the 1st of March, 2010. That amount was actually the amount owing for January and February, 2010 rent and at the time the notice was issued, the rent for March was not yet due. However, the landlord applied to amend his application to include rent for March, 2010. The landlord

also testified that the tenant paid \$800.00 on February 27, 2010 and \$500.00 on March 13, 2010, both payments in cash, for which the landlord did not issue a receipt for use and occupancy only.

The parties also agree that the amount outstanding to date is \$2,300.00, being \$1,100.00 for February, and \$1,200.00 for March. The tenant testified that the parties had a discussion wherein it was agreed that the tenant will pay \$800.00 by March 26, 2010, and \$800.00 bi-weekly after that until the arrears are paid in full. The tenant has just secured employment and is getting more hours as well as some overtime. The landlord has concerns that by the time the arrears are paid, another month's rent will be due for April, 2010, and that perhaps the tenant cannot afford to continue to rent this unit.

Analysis

Based on the landlord's testimony I find that the tenant was served with a notice to end tenancy for non-payment of rent, but the notice was flawed. The tenant has not paid the outstanding rent in full, but has made payments for which no receipt was issued. If the landlord did not want the tenancy to continue, he ought to have issued a receipt for use and occupancy only. Therefore, I must find in favor of the tenant, that the tenancy has been reinstated.

Both parties would benefit from some facts for landlords and tenants in British Columbia, and I attach for each party, a booklet entitled, "A Guide for Landlords and Tenants in British Columbia" with a copy of this decision.

The tenant should take note that rent is due when it is due, and failure to pay in full by the due date can result in a notice to end tenancy. The landlord is within his rights to issue the notice, and accept payment from the tenant for use and occupancy only, which would not invalidate the notice, and would not reinstate the tenancy. The landlord is also reminded that the *Act* requires a receipt be issued for any rent payments made in cash.

Conclusion

Based on the above facts I find that the landlord is not entitled to an Order of Possession.

As for the monetary order, I find that the landlord has established a claim for \$2,300.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. This order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 16, 2010.

Dispute Resolution Officer