

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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. The tenant E.B. participated in the hearing representing both herself and the tenant R.H.

In this decision where I refer to the tenant in singular form, I refer to the tenant E.B. who participated in the hearing and where it appears in its plural form I refer to both tenants.

At the outset of the hearing the tenant requested an adjournment. The tenant claimed that she had only received the application for dispute resolution and notice of hearing (the "Hearing Documents") on April 17 and that she had not had sufficient time to collect evidence. When asked what evidence she would have presented, the tenant advised that she would have presented police reports and proof that the landlord had withdrawn facilities and services. I declined to grant an adjournment as the evidence which the tenant wished to submit was irrelevant to the landlord's claim.

There was some discussion over whether the tenants had been properly served with the Hearing Documents. The landlord provided evidence that the Hearing Documents had been sent to the tenants via registered mail. The parties agreed that registered mail for the building in question is sent to the beer and wine store next door and that an employee of that establishment signs for the documents. The landlord's evidence shows that a party not named in the application signed for the Hearing Documents and the parties agreed that the person who signed for the registered mail was an employee of the beer and wine store. In this case, service of the Hearing Documents by registered mail is ineffective as the landlord knows that the tenants are unable to sign for the registered mail. In the absence of evidence that the beer and wine store employee gave the Hearing Documents to the tenants, this service cannot be effective.

However, on the facts of this case, it is clear that the tenants did receive the Hearing Documents. The landlord's agent testified that in addition to sending the Hearing Documents via registered mail, he personally served R.H. with the Hearing Documents on March 30. The tenant claimed that she did not receive the documents until April 17. Although the tenants were clearly served well outside the 3 day timeframe prescribed by the Act, there is no penalty under the Act for failing to comply with that timeframe. Despite irregularities with service, the hearing proceeded as the tenants had notice of the claim made against them.

At the hearing the landlord advised that no security deposit had been collected and that the application claimed retention of the security deposit in error. I consider the claim to retain the security deposit to have been withdrawn.

Issues to be Decided

Is the landlord entitled to an order of possession?

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

Background and Evidence

The parties agreed that the tenancy began on or about December 20, 2009. The parties further agreed that the tenancy runs from week to week with rent due in advance each Monday. The tenant claimed that she did not know the amount of rent that was payable each week as the co-tenant had been in charge of all financial dealings with the landlord. However, the tenant testified that at some point in the tenancy she showed the police receipts for \$250.00 per week in rent in order to prove that she was a tenant. The parties agreed that the tenants have paid no rent for the period from February 9, 2010 – March 1, 2010 inclusive. The landlord's agent testified that he served the tenants with a 10-day notice to end tenancy for unpaid rent on February 10 by posting the notice on the tenants' door. The tenant acknowledged having received the notice.

Analysis

I find that the tenants were served with a notice to end tenancy for non-payment of rent. The tenants did not pay the outstanding rent within 5 days of receiving the notice and did not apply for dispute resolution to dispute the notice and are therefore 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 \$750.00 in unpaid rent which represents rent owed for the period from February 9, 2010 – March 1, 2010 inclusive. The landlord is also entitled to recovery of the \$50.00 filing fee. I grant the landlord an order under section 67 for \$800.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

I note that the tenant gave extensive testimony about the landlord's purported violations of the Act and tenancy agreement. These submissions were irrelevant to the issue before me, which was the service of the notice to end tenancy and unpaid rent. The tenant is free to make an application for dispute resolution for compensation related to the alleged violations.

Conclusion

The landlord is granted an order of possession and a monetary order for \$800.00.

Dated: April 19, 2010
