

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, served personally by the Landlord to the Tenant on April 2, 2010, at the rental unit.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Are the Landlords entitled to an Order of Possession under section 55 of the *Residential Tenancy Act*?

Are the Landlords entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord testified that the verbal month to month tenancy began sometime around approximately June 2008. At the onset of the tenancy the rent was payable in the amount of \$650.00 and later when the kitchen was removed, sometime in 2009; the rent

was reduced to \$550.00 per month. The Tenant paid a security deposit of \$325.00 at the onset of the tenancy and paid \$650.00 at the beginning of June 2008 as rent. At some later date the rent became payable on the 15th of each month so the Landlord stated there was a possibility of prepaid rent, but she was not certain of when this occurred. Rent is paid in cash and receipts are not issued by the Landlord.

The Landlord argued that she provided the Tenant with a hand written note on March 15, 2010, advising the Tenant to move out because the Landlord required the rental unit for her father. The Landlord stated that the Tenant has failed to pay his February 15, 2010 and March 15, 2010 rent so she issued the Tenant a notice to end tenancy for unpaid rent. When asked what type of notice was served on the Tenant, the Landlord changed her previous testimony to say both notices were on Government forms.

The Landlord confirmed that she did not provide evidence to the Residential Tenancy Branch in support of her application.

Analysis

The Landlord has provided testimony that two Notices to End Tenancy were issued to the Tenant, a 2 Month Notice for Landlord's Use and a 10 Day Notice for unpaid rent, however in the presence of the Landlord's contradictory testimony and in the absence of documentary evidence such as copies of the actual notices, I find the Landlord has failed to prove that these notices were issued in accordance with Act.

The purpose of serving documents under the *Act* is to notify the person being served of their breach and notification of their rights under the *Act* in response. The Landlord is seeking to end the tenancy due to this breach; however, the Landlord has the burden of proving that the Tenant was served with the 10 day Notice to End Tenancy.

In the absence of documentary evidence that the Tenant was issued Notices to End the Tenancy, I find that the Landlord has failed to present the merits of their case and I hereby dismiss their application, without leave to reapply.

I have included in the Landlord's decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the Landlord to familiarize herself with her rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

I HEREBY DISMISS the Landlord's application, without leave to reapply.

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: May 10, 2010.

Dispute Resolution Officer