

DECISION

Dispute Codes OPR, MNR, FF; CNR

Introduction

This hearing was convened by way of conference call to deal with cross applications by the landlord and the tenant. The landlord has applied for an Order of Possession for unpaid rent or utilities, for a monetary for unpaid rent or utilities, and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for an order cancelling the notice to end tenancy.

Both parties attended, gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. The landlord also called a witness, who gave affirmed testimony and was subject to cross examination by the tenant.

Issues(s) to be Decided

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

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

Is the tenant entitled to an order cancelling the notice to end tenancy?

Background and Evidence

This month-to-month tenancy began on June 1, 2009 and the tenant still resides in the unit, #107. The tenant rented unit #204 previously. The parties could not agree on the amount of rent during the hearing; the landlord stated that the tenant paid \$580.00 per month while in unit #204 and the tenant testified that the rent was \$565.00. Once the tenant moved to suite #107, the landlord stated that he paid \$765.00 per month, but the tenant testified that the rent was \$565.00 per month. The parties do agree that the security deposit was paid in the amount of \$290.00 and the landlord provided a copy of a receipt showing that it was paid on May 28, 2009 while the tenant was renting

apartment #204. She also provided a copy of a receipt for apartment #107 dated December 17, 2009 showing rent paid in full for that month in the amount of \$765.00.

The landlord testified that she took over managing the apartments from her mother who is elderly and unable to continue to act.

The tenant has not paid the full amount of rent for January, 2010 and owes \$130.00 for that month. She further testified that he did not make a full rental payment in February, 2010 and owes \$165.00 for that month. Further, he has not made any rental payments for the months of March, April or May, 2010.

The witness for the landlord also testified that she collected \$765.00 from the tenant for the December's rent on December 17, 2009 and issued a receipt. She further testified that in January, 2010 the tenant told the landlord that he wasn't going to pay any rent. The tenant did not dispute this, but added that he told her he wasn't paying rent until the landlord got rid of the crack-heads in the building, and that someone in unit #105 had smashed his window.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 5, 2010. That notice shows that the tenant failed to pay rent in the amount of \$580.00 that was due on January 1, 2010.

The tenant was served with another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 17, 2010 which shows that the tenant failed to pay rent in the amount of \$765.00 for rent that was due on March 1, 2010, plus \$130.00 for January rent and \$165.00 for February rent. That notice does not give a date when the tenant is expected to move out of the residence. The landlord testified that the notice was served on March 17, 2010 by posting it to the door of the tenant's apartment.

The landlord also provided a copy of a letter from the tenant dated March 22, 2010 wherein he admits that he is behind in rent for January and February, and that he requested that he be permitted to pay \$765.00 at the end of March and the remaining amounts at a later date.

The tenant testified that he did work for the landlord and for the previous landlord. The landlord did not dispute that evidence, however testified that she paid him \$1,350.00 in August 2009 for painting fences on her farm, and that in September through December, 2009 he did do work on the farm and at the apartment building, such as painting, sweeping and cleaning, but got paid for each job. There was never any agreement to trade work for rent. The tenant did not dispute that testimony.

Analysis

The *Residential Tenancy Act* provides that a landlord may serve the tenant with the 10 Day Notice to end Tenancy for Unpaid Rent or Utilities at any date after the date rent is due, and if the tenant fails to pay the amount in full within 5 days, it is conclusively presumed that the tenant has accepted that the tenancy ends on the effective date of the notice. The notice does not contain a date when the tenant is expected to move, however, the *Act* further provides that:

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

I find that the date that ought to have been written on the notice, considering that the notice is deemed to be served 3 days after posting it to the door of the residence, is March 30, 2010.

I also find that the tenant owes the rent as claimed by the landlord, and the tenant did not dispute this in his evidence.

Based on the landlord's testimony I find that the tenant was served with a notice to end tenancy for non-payment of rent, which is deemed to be served on March 20, 2010.

The tenant has not paid the outstanding rent and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, being 10 days after he was deemed to be served with the notice.

As for the monetary order, I find that the landlord has established a claim for \$2,590.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

Based on the above facts I find that the landlord is entitled to an Order of Possession. The tenant must be served with the Order of Possession. Should the tenant 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.

I order that the landlord retain the deposit and interest of \$290.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2,350.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant's application is dismissed 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 20, 2010.

Dispute Resolution Officer