

DECISION

Dispute Codes:

OPR, MNR, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, damages and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The for the landlord provided affirmed testimony that on April 1, 2010, copies of the Application for Dispute Resolution and Notice of Hearing were personally served to the tenant with the landlord's sister present as a witness. Service occurred at the rental unit in the afternoon, to the male named as a respondent on the Application. The female named as a respondent was also served at the same time.

These documents are deemed to have been served in accordance with section 89 of the Act; however the Tenant did not appear at the hearing.

Preliminary Matter

The landlord testified that a copy of the 10 Day Notice to End Tenancy for Unpaid Rent was submitted to the Residential Tenancy Branch as evidence. A copy of the Notice was not before. During the hearing I asked the landlord to review each section of the Notice and to then send a copy of the Notice via facsimile before 12 noon. The landlord supplied a copy of the Notice as requested, it was reviewed and I found it included all details as described by the landlord during the hearing.

Based upon the landlord's testimony I determined that the female respondent is not a tenant, but an occupant, who has no rights or obligations under the Act.

Issue(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 and damage or loss?

Is the landlord entitled to filing fee costs?

Background and Evidence

This tenancy commenced in December 2009, with the male respondent's ex-spouse as the tenant. The tenancy was verbal. At the end of February 2010, the landlord discovered that the automatic rent deposit had not been paid to the landlord. The landlord met with the respondent who confirmed that he would now be responsible for the tenancy as his spouse was not living at the rental unit. The respondent, who I will refer to as the tenant, understood that rent was \$875.00 per month, due on the first day of the month.

During the hearing the landlord confirmed he had named the tenant's daughter as a respondent, although she does not pay rent directly to the landlord.

The landlord stated that on March 24, 2010 a Ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of April 3, 2010, was personally served to the tenant by the landlord with the landlord's sister present as a witness. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$500.00 within five days after the tenant is assumed to have received the Notice. The Notice also indicated that the tenant is presumed to have accepted that the tenancy is ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The landlord received \$375.00 from the tenant during the last week of March, \$100.00 on May 1 and \$400.00 on May 16, 2010. Each payment was in cash and a receipt for use and occupancy was issued to the tenant.

The landlord submitted a copy of the receipt issued on May 1, 2010, and a letter to the tenants dated May 1, 2010, informing the tenant that the landlord will proceed with the request for an Order of possession.

The landlord is claiming unpaid rent in the sum of \$2,250.00 from March to April, 2010, inclusive.

Analysis

I find that a verbal tenancy was established with the male respondent and that the rights and obligations of the tenancy transferred to him effective March 1, 2010.

I find that the female named as a respondent is an occupant of the rental unit, as she shared the rental unit with her father, who had established the tenancy with the landlord.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on April 3, 2010, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights and, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective two days after service to the tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$2,250.00 for March, April and May, 2010, and that the landlord is entitled to compensation in that amount.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Conclusion

The landlord has been granted an Order of Possession that is effective two days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$2,300.00, which is comprised of \$2,250.00 in unpaid March to May, 2010, rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of **\$2,300.00**. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia 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: May 18, 2010.

Dispute Resolution Officer