

Decision

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

1. An Order of Possession pursuant to section 55.
2. A monetary order for unpaid rent pursuant to section 67.
3. An Order to be allowed to keep all or part of the security deposit pursuant to section 38.
4. To recover the filing fee from the landlord for the cost of this application pursuant to section 72.

The tenants did not appear. The landlord was given full opportunity to be heard, to present evidence and to make submissions. The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent was personally served to the tenant on May 2, 2010. The landlord gave sworn testimony that the tenant was personally served with the Application for Dispute Resolution hearing package on May 15, 2010. I accept that the tenant was duly served with the 10 Day Notice and the Application for Dispute Resolution hearing package.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

Issue(s) to be Decided

Whether the landlord is entitled to an Order of Possession. Whether the landlord is entitled to a monetary order for unpaid rent, retention of the security deposit, and recovery of the filing fee for this application.

Background and Evidence

The landlord gave evidence that the lease commenced August 1, 2006. Rental for this unit was established at \$525.00 per month payable on the first of each month. The landlord testified that the landlord continued to hold the \$237.50 security deposit for this rental unit.

The landlord has applied for an Order of Possession for non-payment of the May 2010 rent. The landlord testified that the tenant did not pay any portion of the May 2010 rent within the five-day period for doing so following her provision of the 10 Day Notice to End Tenancy for Unpaid Rent. She stated that the tenant made a partial payment of \$240.00 on May 8, 2010, the sixth full day after the 10 Day Notice had been served. This cash payment was made to an individual who assists her with the management of the property.

The landlord gave evidence that the tenant paid the remainder of the \$285.00 owing for the May rent on May 22nd. On that occasion, she testified that she advised the tenant that she was accepting this payment for use and occupancy only. She said that she told him that his payment did not cancel the Notice to End Tenancy that had been served to him.

In her May 13, 2010 application for dispute resolution, the landlord applied for an Order of Possession, as the tenant had not complied with the request to pay all of the unpaid May rent by that time. The landlord applied for a monetary award of \$522.50 at that time.

Analysis

Order of Possession

On May 2, 2010, the tenant received the 10 Day Notice to End Tenancy. The tenant failed to pay any portion of the May 2010 rent within five days of receiving the 10 Day Notice to End Tenancy.

The tenant has not made application for dispute resolution pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to either pay the outstanding May rent or apply for dispute resolution within five days led to the end of this tenancy on May 12, 2010.

Based on this evidence, the only mechanism whereby the tenant could continue the tenancy would be if the landlord's actions in accepting rental payments of \$240.00 on May 8th and \$285.00 on May 22nd reinstated this tenancy. The landlord gave evidence that her representative accepted the \$240.00 cash payment from the tenant on May 8, 2010 without advising the tenant that he did so for use and occupancy only. However, since the tenant did not pay all of the outstanding rent at that time, I do not find that the tenancy was reinstated on the basis of this acceptance of a portion of the outstanding rent. When the landlord received the remaining \$285.00 of rent owing on May 22, 2010, she testified that she advised him that she was doing so for use and occupancy only. By that time, she had served the tenant with an Application for Dispute Resolution in which she was seeking an Order of Possession. I find that the landlord's action in accepting the May 22 rent payment for use and occupancy only did not reinstate the tenancy.

The 10 Day Notice to End Tenancy required the tenant's payment of all of the outstanding rent within five days of receiving that Notice. As that did not occur, I find that the tenancy was not reinstated on either May 8 or May 22, 2010. I find that the landlord is entitled to a two day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not

vacate the rental unit within the two days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Monetary Order for Rental Arrears

The landlord testified that she received the full rent for May before the hearing. Consequently, I am dismissing the landlord's requested claim for unpaid rent for May 2010.

Filing Fee and Security Deposit

As the landlord was successful in this application for an Order of Possession, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application. The landlord testified that she continues to hold a security deposit of \$237.50 from August 2006. I allow the landlord to retain \$50.00 from this security deposit to recover the filing fee.

Conclusion

I am granting the landlord an Order of Possession to be effective two days after notice is served to the tenant. I am dismissing the application for a monetary order for rental arrears for the reasons outlined above.

The landlord is provided with a formal Order of Possession in the above terms. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.