

Decision

Dispute Codes: OPR, MNR, MND, MNSD, FF

Introduction

This hearing dealt with an application by the landlords for an order of possession, a monetary order as compensation for unpaid rent, compensation for damage to the unit, retention of the security deposit, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony. Shortly after the hearing began, landlord “KS” either withdrew from the conference or inadvertently cut himself off, and the landlords’ testimony was provided mainly by landlord “HG.”

Tenant “DP” took principal responsibility for providing the tenants’ testimony, while tenant “DO” provided commentary in the background to tenant “DP.” Tenant “DP” used vulgar language and spoke in an abusive manner toward the landlord; despite repeated requests to conduct himself appropriately and await his turn, tenant “DP” persisted in being abusive, spoke over the landlord as well as the dispute resolution officer, and was still yelling when the conference call was concluded.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act

Background and Evidence

There is no written tenancy agreement in evidence for this tenancy which began on or about June 15, 2009. While the landlord testified that rent in the amount of \$1,100.00 is payable in advance on the first day of each month, the tenant testified that monthly rent is \$1,000.00. A security deposit of \$550.00 was collected near the outset of tenancy.

The landlord testified that rent remains outstanding in 2010 as follows:

\$200.00 – January

\$300.00 – February

\$1,100.00 – March

\$650.00 – April

\$1,100.00 – May

Total: \$3,350.00

The landlord issued a 10 day notice to end tenancy for unpaid rent dated March 11, 2010, which was served in person on the tenants on that same date. A copy of the notice was not before me in evidence. Subsequently, while no rent was paid in March, the tenants made a payment in the latter half of April in the amount of \$650.00.

The landlord testified that while the tenants have damaged the unit, the full extent of the damage is not presently known. The landlords provided no documentary or photographic evidence in support of this allegation.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated March 11, 2010. The tenants did not pay the outstanding rent within 5 days of receiving the notice and did not apply to dispute the notice. The tenants are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlords are entitled to an order of possession.

Based on the affirmed testimony of the landlord and the conduct of tenant “DP” during the hearing, I find on a balance of probabilities that monthly rent is \$1,100.00.

As for the monetary order, I find that the landlords have established a claim of \$3,400.00. This is comprised of \$3,350.00 in unpaid rent as set out above, in addition to the \$50.00 filing fee. I order that the landlords retain the security deposit of \$550.00, and I grant the landlords a monetary order under section 67 of the Act for the balance owed of \$2,850.00 (\$3,400.00 - \$550.00).

The landlords' application for a monetary order as compensation for damage to the unit is dismissed with leave to reapply, pending the landlords' opportunity to inspect the unit.

Conclusion

Pursuant to all of the above, I hereby issue an **order of possession** in favour of the landlords effective not later than **two (2) days** after service upon the tenants. This order must be served on the tenants. 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.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$2,850.00**. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: May 3, 2010

Dispute Resolution Officer