

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession and Monetary Order for unpaid rent. The landlord also applied for authorization to retain the tenant's security deposit and recover the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to submissions of the other party.

The tenant confirmed service of the Notice of Hearing, Application for Dispute Resolution, tenancy agreement, 10 Day Notice and proof of service via registered mail. The tenant also confirmed receiving copies of receipts in the few days that preceded this hearing. I referred to these documents in proceeding with the hearing.

The landlord made this application against two individuals. I have amended the application to reflect that the tenancy agreement was signed by only the male respondent. Accordingly, I find only the male respondent is the tenant and the Orders issued with this decision name only that tenant.

Issues(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order and if so, the amount?
3. Is the landlord entitled to retain the security deposit?
4. Can the parties reach a mutual agreement to resolve this dispute?

Background and Evidence

I heard undisputed testimony as follows. The tenant and the former owner of the property entered into a month-to-month tenancy that commenced July 1, 2009. The tenancy agreement requires that the tenant pay rent of \$850.00 on the 1st day of every month. The current owner acquired the residential property in mid-December 2009.

The tenant and landlord had a meeting in January 2010. The parties provided different versions of what transpired during that meeting and subsequent conversations; however, it was not in dispute that the landlord verbally informed the tenant he was the new owner of the property

The landlord testified the tenant was making partial payments and late payments for rent. The tenant submitted that this was acceptable practice with the former landlord. On March 12, 2010 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the rental unit door. The Notice indicated an effective date of March 22, 2010 and that \$1,400.00 was outstanding. The balance outstanding was comprised of \$550.00 for February 2010 and \$850.00 for March 2010. The tenant did not dispute the Notice.

The tenant made cash payments to the landlord after the effective date of the Notice. The landlord recorded payments of \$150.00 on April 23, 2010; \$500.00 April 29, 2010; and, \$800.00 on May 19, 2010. The tenant stated there was a \$400.00 cash payment made March 20, 2010 not recorded by the landlord. The landlord acknowledged the payment but stated that it was his practice to combine partial payments and issue one receipt and that this \$400.00 payment was included in the receipt issued for \$800.00 with respect to rent outstanding for February 2010.

The tenant acknowledged that he did not pay all of the rent owed due to personal circumstances and because he felt entitled to withhold rent for high heating bills and other disturbances.

During the hearing discussion ensued with respect to a tenant's obligation to pay rent when due under the terms of the tenancy agreement as well as a landlord's obligation to issue receipts in timely manner that reflect the date and amount of cash payments. I found both parties were remiss in meeting their respective obligations.

Also raised was the issue of reinstating a tenancy by accepting payment after the effective date of a Notice without communicating to the tenant that acceptance of the payment is for use and occupancy only and that such payment does not reinstate the tenancy.

The parties were able to reach a mutual agreement to resolve this dispute that I record as follows:

1. The tenant and all other occupants of the rental unit will vacate the rental unit no later than July 10, 2010 and the landlord is provided an Order of Possession effective that date.
2. The landlord is authorized to retain the tenant's security deposit.
3. The landlord is provided a Monetary Order for the amount of \$1,600.00 to serve upon the tenant.

Analysis

I accept the mutual agreement reached between the parties and make it an Order to be binding upon both parties.

The tenant, and any other occupants of the rental unit, must vacate the rental unit by 1:00 p.m. on July 10, 2010. The tenant has the obligation to ensure the rental unit is left undamaged and reasonably clean as provided under the Act. I provide for the landlord with this decision an Order of Possession effective at 1:00 p.m. on July 10, 2010 to serve upon the tenant. The landlord may enforce the Order of Possession by filing it in The Supreme Court of British Columbia.

In recognition of the mutual agreement, I hereby authorize the landlord to retain the tenant's security deposit and I provide the landlord with a Monetary Order in the amount of \$1,600.00 to serve upon the tenant. The Monetary Order may be enforced by filing it in Provincial Court (Small Claims).

Conclusion

This tenancy shall end July 10, 2010 by mutual agreement. The landlord has been provided an Order of Possession effective at 1:00 p.m. on July 10, 2010.

The landlord has been authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of \$1,600.00 to serve upon the tenant.

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: June 24, 2010.

Dispute Resolution Officer