

Decision

Dispute Codes: OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order as compensation for unpaid rent, and recovery of the filing fee. The landlord was represented in the hearing by his wife, who gave affirmed testimony.

Despite being served in person with the application for dispute resolution and notice of hearing, the tenants did not appear.

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 more than 10 years ago. Currently, rent in the amount of \$1,600.00 is payable in advance on the first day of each month. A security deposit was collected at the outset of tenancy, however, the exact date of collection and the precise amount collected could not be confirmed during the hearing.

Arising from an accumulation of unpaid rent over several months in the total amount of \$5,330.00, the landlord issued a 10 day notice to end tenancy for unpaid rent dated April 27, 2010. The notice was served in person on the tenants on that same date. A copy of the notice was submitted into evidence. Subsequently, the tenants did not pay the entire amount of outstanding rent within 5 days of receiving the notice; thereafter, the tenants have made only partial payments of rent at irregular intervals, and they continue to reside in the unit. The landlord's wife was unable to confirm the exact amount of rent which currently remains overdue.

Analysis

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord's wife, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated April 27, 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 landlord is entitled to an order of possession.

As for the monetary order, I find that the landlord has provided insufficient information as to the exact amount of rent which currently remains overdue. The landlord has the option of making a further application for dispute resolution, with evidence in support of a monetary order for a particular amount of unpaid rent. In the meantime, this aspect of the landlord's application is dismissed with leave to reapply.

As the landlord has achieved some success in this application, I find that the landlord is entitled to recover the filing fee by way of withholding \$50.00 from the security deposit.

Conclusion

Pursuant to the above, I hereby issue an **order of possession** in favour of the landlord 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, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I hereby order that the landlord may withhold \$50.00 from the security deposit in order to recover the filing fee.

DATE: July 7, 2010

Dispute Resolution Officer