

Decision

Dispute Codes: OPR, MNR, MND, MNDC, OLC, RP, LRE, LAT, FF

Introduction

This hearing dealt with two applications: i) by the landlord for an order of possession / a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, regulation or tenancy agreement / and recovery of the filing fee; ii) by the tenant for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement / an order instructing the landlord to comply with the Act, regulation or tenancy agreement / an order instructing the landlord to make repairs to the unit, site or property / an order suspending or setting conditions on the landlord's right to enter the rental unit / authorization for the tenant to reduce rent for repairs, services or facilities agreed upon but not provided / and recovery of the filing fee.

Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether either party is entitled to any of the above under the Act, regulation or tenancy agreement

Background and Evidence

The parties presented conflicting testimony in regard to most aspects of this landlord – tenant relationship. However, there appears to be no dispute that the tenant has resided in the unit since sometime in January 2010, that he continues to reside in the unit, and that no rent has been paid. Further, the landlord testified that no security or pet damage deposit has been collected.

Included in evidence is a copy of a written tenancy agreement which appears to have been signed by both parties on March 3, 2010. Pursuant to the agreement, the tenancy

is to span the fixed term from June 19 to November 18, 2010, with a monthly payment of rent due on the 19th of each month in the amount of \$950.00.

Manual notations included in the tenancy agreement provide that the tenancy commences only under the following conditions:

If renovations complete. No agreement if renovations not complete.

Further manual notations appear on the tenancy agreement as follows:

NOTE: [Tenant] got the key for repairing Basement, he is not allow Live there until Basement repair complete, finish, Ready. He will be move in June 19, 2010 and Pay to me full Rent and Damage Deposit and Pet Deposit. Full Labour paid to [tenant] \$2000 cash for Renovations.

NOTE: [Tenant] I got a [unit address] key from [landlord] For Repairing the Basement. I am understand I am not allow to Live in the basement until June 19, 2010. [Landlord] paid \$2000 cash to me for full Labour to Renovations Basement. If Renovations not complete June 19, 2010, then I am not allow to live there. **[reproduced as written]**

The landlord testified that despite the agreement whereby the tenant was not to occupy the unit before June 19, 2010, and only then if renovations had been completed, the tenant has resided in the unit since January 2010.

The tenant testified that the landlord has not provided him with a copy of the tenancy agreement, which the landlord disputes, and the tenant alleges that the landlord made unauthorized amendments to the tenancy agreement after the parties signed it in March 2010.

The landlord issued a 10 day notice to end tenancy for unpaid rent or utilities dated April 3, 2010. The notice documents that rent of \$950.00 was not paid when due on April 1, 2010. It is not clear how / when the notice was served.

The landlord issued a second 10 day notice dated June 20, 2010, which is shown as served by way of posting on the tenant's door. Evidence includes a copy of a "Proof of Service" that the notice was served by posting on the tenant's door, as previously noted, on June 20, 2010. The notice documents that rent of \$950.00 was not paid when due on June 19, 2010. Subsequently, the tenant filed an application for dispute resolution on June 29, 2010.

Evidence submitted with the tenant's application includes an inventory of miscellaneous expenses he claims to have incurred in relation to renovations he states he completed in the unit, totaling \$1,665.00. Evidence submitted by the tenant does not include any receipts in support of expenses he claims to have incurred. The tenant's application does not include an application to cancel the landlord's notice to end tenancy.

Analysis

Based on the documentary evidence and the conflicting testimony of the parties, I find that the parties entered into a tenancy agreement commencing June 19, 2010. I further find that pursuant to the agreement, rent of \$950.00 was due and payable on the 19th of each month. Additionally, I find there is insufficient evidence to prove that by June 19, 2010, the unit was not in a state of repair that complies with the health, safety and housing standards required by law.

I also find that the tenant was served with a 10 day notice to end tenancy for unpaid rent or utilities dated June 20, 2010. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply to dispute the notice. The tenant is 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 established a claim of \$2,425.00. This is comprised of unpaid rent of \$950.00 due on June 19, unpaid rent of \$950.00 due on July 19, unpaid rent of \$475.00 for the half month period between August 19 when

rent was due, and the anticipated stage at which the order of possession will take effect, plus the \$50.00 filing fee.

As the tenant has provided insufficient evidence of any expenses incurred for supplies related to renovations he claims to have undertaken in the unit, that aspect of his application is hereby dismissed.

Where it concerns certain orders against the landlord in addition to other remedies sought by the tenant, as set out in the introduction of this decision, I find on a balance of probabilities that there is insufficient evidence to support these aspects of the tenant's application. Accordingly, they are hereby dismissed. Further, the order of possession to which I find the landlord has established entitlement, provides that the tenant must vacate the unit within two (2) days of being served.

As the tenant has not succeeded in this application, his application to recover the filing fee is also hereby dismissed.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service upon the tenant. This order must be served on the tenant. Should the tenant 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 landlord in the amount of **\$2,425.00**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: August 20, 2010

Dispute Resolution Officer