

Decision

Dispute Codes: OPR, CNR, MNR, MNDC, RP, MNSD, FF

Introduction

This hearing dealt with 2 applications: i) by the landlord for an order of possession / a monetary order as compensation for unpaid rent / and retention of the security deposit; ii) by the tenant for cancellation of the notice to end tenancy / a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement / an order instructing the landlord to make repairs to the unit, site or property / and recovery of the filing fee. The landlord participated in the hearing and gave affirmed testimony.

Despite scheduling of the hearing in response to applications from both parties, the tenant did not appear. The landlord testified that he served his application for dispute resolution and notice of hearing on the tenant by way of posting on his door. The landlord also testified that he had not been served with the tenant's hearing package.

Issues to be decided

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

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from May 7, 2010 to May 31, 2011. Rent of \$4,150.00 is payable in advance on the first day of each month. A security deposit of \$2,075.00 was collected near the outset of tenancy.

Arising from rent which was in arrears for 2 months on July 1, 2010, the landlord issued a 10 day notice to end tenancy for unpaid rent dated July 19, 2010. The notice was served in person on the tenant on that same date. A copy of the notice was submitted into evidence. Subsequently, the tenant made no payment towards rent and he continues to reside in the unit.

Analysis

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated July 19, 2010. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply to dispute the notice until July 27, 2010, which is outside of the 5 day period permitted under the Act. 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 \$12,450.00, which is comprised of 3 months of unpaid rent (3 x \$4,150.00). I order that the landlord retain the security deposit of \$2,075.00 and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$10,375.00 (\$12,450.00 - \$2,075.00).

The tenant's application is hereby dismissed in its entirety.

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 **\$10,375.00**. 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 25, 2010

Dispute Resolution Officer

