

Decision

Dispute Codes: CNR, OLC

Introduction

This hearing dealt with an application by the tenant for cancellation of the notice to end tenancy for unpaid rent or utilities / and an order instructing the landlord to comply with the Act, regulation or tenancy agreement. Both parties participated in the hearing and gave affirmed testimony, even while they were both agitated and repeatedly talked over one another.

During the hearing the landlord confirmed the written request included in his documentary submission to obtain an order of possession, in the event the tenant's application to set aside the notice is not successful.

Issues to be decided

- Whether either party is entitled to any of the above under the Act

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the month-to-month tenancy began on or about January 1, 2010. The parties do not dispute that rent is payable in advance on the first day of each month. The landlord claims the rent is \$500.00, however, the tenant claims the rent is only \$450.00. There is no dispute that payment of rent by the ministry is limited to \$450.00 per month. There is a dispute between the parties as to whether there was an agreement at the outset of tenancy whereby the tenant would make up the additional \$50.00 which, as previously stated, the landlord claims is the amount of monthly rent. There is no evidence before me in regard to whether or not a security deposit was collected at the outset of tenancy.

A 10 day notice to end tenancy has been issued on three separate occasions, dated respectively, as follows: January 15, May 1 & July 2, 2010. In regard to the most recent 10 day notice of July 2, 2010, the landlord claims that payment of the \$500.00 due is limited to \$375.00, and that \$125.00 remains overdue. A receipt included in evidence submitted by the tenant allegedly bears the signature of the landlord and acknowledges payment of the balance of \$125.00 for July's rent. The landlord's agent claims that the landlord did not issue this receipt and that it was created by the tenant who knows how to "play the system."

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated July 2, 2010. I further find, on a balance of probabilities, that the tenant's subsequent payment toward rent is limited to \$375.00, and that \$125.00 is therefore still outstanding. Additionally, I find that the tenant's application to dispute the landlord's notice was filed on July 29, 2010, which is outside the 5 day period available to dispute such a notice following its receipt. In the result, I find that the landlord is entitled to an order of possession.

As for various compensation sought by the landlord in association with the tenancy, the landlord has the option of making his own application for dispute resolution.

Following from the above, the tenant's application is 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.

DATE: September 17, 2010

Dispute Resolution Officer