

REVIEW HEARING DECISION

Dispute Codes: OPR, MNR and FF

Introduction

This application was brought by the landlord on August 10, 2010 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on July 12, 2010. The landlord also sought a Monetary Order for the unpaid rent.

This matter was dealt with as a Direct Request proceeding on August 20, 2010 with the result that the Dispute Resolution Officer granted an Order of Possession effective two days from service and a Monetary Order for \$1,250.

On August 30, 2010, the tenant made application for a Review Hearing on the claim that he had, in fact, paid the July rent within five days of receipt of the Notice to End Tenancy. The Dispute Resolution Officer found sufficient doubt to suspend the Orders issued on August 20, 2010 and grant the present Review Hearing.

At the commencement of the hearing, the tenant gave evidence that he had been urgently called to return to Quebec as his father had been stuck with a serious illness. As he did not have his paper work with him, he requested an adjournment.

The landlord objected to the adjournment on the grounds that the hearing turned on the very simple question of whether the tenant paid his overdue rent within five days of receiving the Notice to End Tenancy for unpaid rent as claimed on the tenant's application for this Review Hearing. The landlord stated that he would present clear proof that the rent was not paid within the five days.

On that basis, I declined the request for adjournment on the understanding that I would consider the Order of Possession only. The landlord agreed that he would make another application for the Monetary Order which was more complex and for which the amount claimed had changed since it was issued on August 20, 2010. The tenant would then be granted the opportunity to access his records to respond to the monetary claim.

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Therefore, I hereby order that the Orders of August 20, 2010 are cancelled and of no further force or effect.

Background and Evidence

As noted, the present Review Hearing was granted on the tenant's claim that he had paid the full rent within five days of receiving the Notice to End Tenancy of July 12, 2010.

I find as fact that the Notice to End Tenancy was served by registered mail on July 12, 2010 and would be deemed to have been received on the fifth day after, July 17, 2010, by section 90(a) of the Act. Section 46(4) of the *Act* then provides the tenant with five days, to July 22, 2010, to pay the rent and render the notice of no effect.

The tenant submits that he did pay within five days and did so by money order.

However, the landlord submitted a copy of the tenant's cheque dated July 22, 2010, the reverse side of which shows a bank stamp indicating that it was returned as dishonoured on July 30, 2010.

The landlord concurred that the tenant had provided a money order but that it was about a week later.

Analysis

I must find that the tenant's claim that he paid the rent by money order first, then followed with the NSF cheque issued on July 22, 2010 defies all logic and the landlord's version that the money order came a week later carries the far greater weight of probability.

Therefore, I find that the rent was not paid within the five days permitted by section 46(4) of the *Act*. Accordingly, I find that the landlord was and remains entitled to the Order of Possession granted on August 20, 2010.

In view of the tenant's attendance in Quebec to be with his father, the landlord stated that he would accept and Order of Possession to take effect on October 31, 2010. I find he is so entitled.

Conclusion

The Order of Possession and the Monetary Order issued on August 20, 2010 are hereby cancelled and of no force or effect.

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on October 31, 2010.

The landlord remains at liberty make application for a Monetary Order for the outstanding rent and any damage or losses as may be ascertained at the conclusion of the tenancy.

October 14, 2010