

Decision

Dispute Codes: OPR, CNR, MNR, MND, MNSD, 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, retention of the security deposit, and recovery of the filing fee; ii) by the tenants for cancellation of the notice to end tenancy. 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

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on January 5, 2010. Rent in the amount of \$950.00 is payable in advance on the first day of each month. A security deposit of \$475.00 was collected at the outset of tenancy. Pursuant to a written agreement signed by the parties on April 24, 2010, the parties agreed that late payment of rent would be subject to a \$50.00 penalty.

Arising from rent which was unpaid when due on September 1 and October 1, 2010, two separate 10 day notices to end tenancy were issued by the landlord dated, respectively, September 2 and October 5, 2010. At some point after issuance of the first notice, the tenant paid the overdue rent for September 2010. However, subsequent to issuance of the 10 day notice dated October 5, 2010, while the tenant filed an application for dispute resolution, no rent was paid for either October or November.

While the landlord's application includes a request for compensation for damage to the unit, there are no related invoices or receipts included in evidence. During the hearing,

the landlord also stated that the tenant is in arrears with payment of utilities, however, there is no related documentary evidence included with the application.

While the tenant claimed there were a number of deficiencies with the unit, his application includes no related claim for compensation or reduction in rent.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute, and undertook to have a conversation with each other outside of the hearing in the hope of achieving at least a partial resolution of the dispute.

Analysis

Based on the documentary evidence and the affirmed testimony of the parties, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated October 5, 2010. While the tenants filed an application to dispute the notice within the 5 days permitted for disputing same, the tenants did not pay the outstanding rent within 5 days of receiving 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 established a claim of \$2,050.00. This is comprised of \$1,900.00 combined in unpaid rent for October and November 2010, as well as \$100.00 combined in penalties for late payment of rent for each of October and November 2010, and the \$50.00 filing fee. I order that the landlord retain the security deposit of \$475.00 and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$1,575.00 (\$2,050.00 - \$475.00).

I find there is insufficient evidence to support the landlord's application for compensation either for damage to the unit or unpaid utilities. Accordingly, these aspects of the application are hereby dismissed.

Conclusion

Pursuant to all of 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 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 **\$1,575.00**. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: November 8, 2010

Dispute Resolution Officer