

Decision

Dispute Codes: OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order for unpaid rent, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act

Background and Evidence

Pursuant to a written tenancy agreement, the original fixed term of tenancy was from March 1, 2008 to February 28, 2009. Thereafter, tenancy has continued on a month-to-month basis. Originally, rent in the amount of \$945.00 was payable in advance on the first day of each month. However, evidence submitted by the landlord includes a copy of a notice of rent increase dated March 17, 2009. Pursuant to the notice of rent increase, rent was increased by \$34.96 to \$979.96 per month effective July 1, 2009. The tenant disputes that he ever received the notice of rent increase. A security deposit of \$472.50 was collected at the outset of tenancy.

The gist of the landlord's claim is that the tenant's rent cheque in the amount of \$945.00 for May 2009 was NSF. During the hearing the tenant did not dispute this. Further to this, the landlord claims that while the tenant continued to pay rent of \$945.00, since July 1, 2009 he should have been paying \$979.96. Currently, therefore, the landlord takes the position that \$1,639.32 is overdue, calculated as follows:

\$945.00: May 2009

\$594.32: \$34.96 x 17 months (July 2009, *inclusive* to November 2010, *inclusive*)

\$25.00: fee for returned cheque (May 2009)

\$25.00: fee for returned cheque (June 2009)

\$25.00: fee for late payment of rent (June 2009)

\$25.00: fee for late payment of rent (November 2009)

The landlord's agent testified that a 10 day notice to end tenancy dated September 24, 2010 was served on the tenant by way of posting on his door on that same date. The amount shown as overdue on the notice is \$1,544.40, comprised as follows:

\$945.00: May 2009

\$524.40: \$34.96 x 15 months (July 2009, *inclusive* to September 2010, *inclusive*)

\$25.00: fee for returned cheque (May 2009)

\$25.00: fee for returned cheque (June 2009)

\$25.00: fee for late payment of rent (June 2009)

Subsequently, while the tenant continued to pay monthly rent in the amount of \$945.00, he neither paid the full amount deemed by the landlord to be overdue, nor did he file an application for dispute resolution within 5 days of receiving the notice. Presently, the tenant continues to reside in the unit.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Based on the documentary evidence and testimony of the parties, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated September 24, 2010. The tenants did not pay the outstanding rent within 5 days of receiving the notice

and did not apply to dispute 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 \$1,689.32. This is comprised of \$1,639.32 in unpaid rent and fees as set out above, in addition to the \$50.00 filing fee. I order that the landlord retain the security deposit of \$472.50 plus interest of \$5.93, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$1,210.89 (\$1,689.32 - \$478.43).

Conclusion

Pursuant to all of the above, I hereby issue an order of possession in favour of the landlord effective not later than 1:00 p.m., Tuesday, November 30, 2010. 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 \$1,210.89. 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 15, 2010

Dispute Resolution Officer