

Decision

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order as compensation for unpaid rent, retention of the security deposit, and recovery of the filing fee. The landlord participated in the hearing and gave affirmed testimony.

Despite service of the application for dispute resolution and notice of hearing by way of posting on the tenant's door on November 5, 2010, the tenant did not appear.

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 fixed term of tenancy was from December 1, 2009 to May 31, 2009. Thereafter, while tenancy has continued on a month-to-month basis, according to manual notations on the tenancy agreement, the tenant changed units effective August 1, 2010.

Rent of \$1,300.00 was payable in advance on the first day of each month for the first unit in the tenancy. As for the second unit in the tenancy, monthly rent is \$1,000.00. A security deposit of \$650.00 was collected on or about November 28, 2009.

Arising from rent which remained overdue on September 1, 2010 in the amount of \$2,300.00, the landlord issued a 10 day notice to end tenancy for unpaid rent dated September 23, 2010. The notice was served by way of posting on the tenant's door on that same date. A copy of the notice was submitted into evidence. Subsequently, the tenant made two separate payments toward rent: \$1,200.00 on October 7 and

\$1,000.00 on October 30, 2010. The tenant continues to reside in the unit. According to the landlord's calculations, rent currently remains outstanding as follows:

\$100.00 for August 2010

\$1,000.00 for October 2010

\$1,000.00 for November 2010

Further, the landlord seeks fees for late payment of rent in the total amount of \$100.00 (4 x \$25.00 for each of August, September, October & November 2010).

The landlord testified that she reached agreement with the tenant whereby she would retain \$150.00 from the security deposit for the cost for repairing a broken window.

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 September 23, 2010. The tenant did not pay the full amount of outstanding rent within 5 days of receiving the notice and did not apply to dispute the notice. 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 \$2,400.00. This is comprised of \$2,100.00 in unpaid rent, \$100.00 for fees assessed for late payment of rent, \$150.00 for repairs to a broken window (as agreed to with the tenant), and the \$50.00 filing fee. I order that the landlord retain the security deposit of \$650.00, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$1,750.00.

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 **\$1,750.00**. 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: November 29, 2010

Dispute Resolution Officer