

DECISION

Decision Codes: OPR, MNR, MDSD & FF

Introduction

This application was brought by the landlord seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid utilities. The landlord also sought a Monetary Order for the unpaid utilities and legal and administrative fees related to the present and previous actions, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against any balance found owing.

Issues to be Decided

This application requires decisions on whether the landlord is entitled to an Order of Possession, a Monetary Order for damage or losses under the legislation or rental agreement and unpaid utilities, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Background and Evidence:

This tenancy began on September 15, 2007. Rent is \$1,800 per month and the landlord holds a security deposit of \$1,700 paid at the beginning of the tenancy.

This tenancy has been the subject of four hearings including the present one and one Judicial Review before the Supreme Court of British Columbia.

The present hearing, one on September 13, 2010 and one on October 15, 2009 were brought by the landlord. Another held on June 9, 2010 was brought by the tenants.

The Decision resulting from the hearing of October 15, 2009 was referred back to the Branch on Judicial Review, but the transcript was never filed with the branch to permit the matter to be heard again.

The landlord's use of a rental agreement that offends the *Residential Tenancy Act* on a number of its provisions appears to be at the heart of the disputes between the parties.

In the present application, the landlord seeks an Order of Possession under section 46(6) of the *Act*, which permits the landlord to treat unpaid utilities as rent if they have not been paid within thirty days of written notice to do so. The landlord submitted into evidence a copy of a demand letter dated September 12, 2010 for payment of utilities totalling \$612.76, reduced to \$580.92 on the landlord's application..

However, the landlord has not submitted a copy of a previous or current rental agreement signed by the tenants which makes the tenants responsible for the utilities payments claimed by the landlord.

The tenants adamantly submit that they have never agreed to pay any of the utilities except for 90 per cent of the water bill which obligation has been kept up to date.

The landlord makes further claim for partial recovery of legal fees and seeks \$4,419.08 on that claim.

The landlord's advocate submitted that the landlord is entitled to the Order of Possession under section 46(5) of the *Act*. This section states that if a tenant receiving a notice to end tenancy for unpaid rent/utilities does not pay or make application to contest the notice within five days of receipt, they are conclusively presumed to have accepted that the tenancy ended on the date set by the notice.

A major portion of this 70-minute hearing was devoted to attempts by the landlord's agent and the tenants to arrive at a mutual agreement to end the tenancy.

Analysis

As to the landlord's claim for reimbursement of a portion of his legal fees, there is no provision within the *Act* for the awarding of such discretionary fees. In addition, some or all of this claim is based on the submission to the Supreme Court of British Columbia and I have no jurisdiction to address costs incurred for proceedings the court.

The landlord's agent stated that she had cautioned her client on that point, but he proceeded with the claim for no apparent purpose that I can find other than to intimidate the tenants.

In spite of his experience with dispute resolution, the landlord has submitted no documentary evidence in support of his claim that the tenants are responsible for utilities other than the portion of the water bill they have agreed to pay. Therefore, that claim must be dismissed without leave to reapply.

As the landlord's agent has noted, it is customary to grant an Order of Possession to the landlord when a tenant has neither paid nor contested a Notice to End Tenancy for unpaid rent.

However, I find that the landlord's actions have been flawed from the outset by claiming for utilities payments from the tenants without agreement or submitting to them or this hearing documentary proof of their agreement.

Section 62(4)(c) of the *Act* provides that the director's designate may dismiss an application if the application constitutes an abuse of the dispute resolution process. I find that the application does abuse the process and dismiss it in its entirety.

For that reason, I cannot grant the Order of Possession under section 46(5) of the *Act*.

Conclusion

The landlord's application is dismissed without leave to reapply.

Dated December 10, 2010.