



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, OPR, MNSD, MNR, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and a cross-application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Despite having been served with the application for dispute resolution and notice of hearing by registered mail on January 19, the tenant did not participate in the conference call hearing.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

Background and Evidence

The landlord's undisputed evidence is as follows. The tenant is obligated to pay rent in the amount of \$1,500.00 in advance on the first day of each month. In January 2010 the landlord collected from the tenant a security deposit in the amount of \$750.00. The tenant failed to pay \$6,000.00 of his rent that was due during 2010 and on January 8, 2011 the landlord personally served the tenant with a notice to end tenancy.

The parties attempted to come to an agreement to preserve the tenancy, but the tenant did not comply with the terms of the agreement. The landlord accepted rent for the months of January 2011 and February 2011 and seeks an order of possession effective February 28. The landlord indicated that he would be willing to forgo enforcing the order of possession in the event the tenant made arrangements to pay the arrears in a timely fashion as well as making future rental payments on the dates on which they were due.

In addition to claiming rental arrears, the landlord made a claim for \$1,600.00 as the estimated cost of utilities. The landlord testified that the utility accounts are in the

tenant's name and that the tenant had indicated that he was in arrears. The landlord expressed concern that the arrears would be assessed against him as the property owner in the event that the tenant did not satisfy those debts.

Analysis

As the tenant did not appear at the hearing to advance his claim, the claim is dismissed without leave to reapply.

I accept the landlord's undisputed testimony, I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice and most of the arrears have not been satisfied. Based on the above facts I find that the landlord is entitled to an order of possession. The tenant must be served with the order of possession. 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.

As for the monetary order, I find that the landlord has established a claim for \$6,000.00 in unpaid rent. The landlord is also entitled to recovery of the \$100.00 filing fee. I order that the landlord retain the \$750.00 security deposit and I grant the landlord an order under section 67 for the balance due of \$5,350.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

As for the claim for utilities, I find the claim to be premature and dismiss the claim with leave to reapply. The landlord has not yet suffered any loss and should the charges be assessed against the property, may make a claim at that time.

Conclusion

The tenant's claim is dismissed without leave to reapply.

The landlord is granted an order of possession and a monetary order for \$5,350.00. The landlord may retain the security deposit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 09, 2011

Residential Tenancy Branch