

Decision

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an order of possession / a monetary order as compensation for unpaid rent or utilities / retention of the security deposit / 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, a copy of which is not in evidence, the month-to-month tenancy began on October 1, 2009. Monthly rent of \$1,150.00 is payable in advance on the first day of each month, and a security deposit of \$575.00 was collected.

Arising from rent which remained overdue on June 1, 2011, the landlord issued a 10 day notice to end tenancy for unpaid rent or utilities dated June 3, 2010. While the landlord testified that the notice was served by way of posting on the tenant's door on that same date, the tenant disputes that she ever received a copy of the notice. In any event, the parties agree that rent remains overdue as follows:

\$700.00: *May*

\$1,150.00: *June*

\$1,150.00: *July*

Total: \$3,000.00

While the landlord seeks an order of possession effective not later than 2 days after service on the tenant, the tenant testified that she is prepared to vacate the unit not later than July 31, 2011.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenant is in arrears with rent in the amount of \$3,000.00, as set out above. However, there is conflicting testimony from the parties in regard to whether or not the 10 day notice dated June 3, 2011 was served on the tenant. The tenant claims that it was not. The landlord claims that it was, however, the landlord has provided no evidence to support his claim such as a "proof of service" or witness testimony. Accordingly, I find that pursuant to the agreement between the parties that tenancy will end and that an order of possession will be issued in favour of the landlord, I find there is insufficient evidence to justify making the order of possession effective anytime before July 31, 2011.

As for the monetary order, I find that the landlord has established a claim of \$3,050.00. This is comprised of \$3,000.00 in unpaid rent, in addition to the \$50.00 filing fee. I order that the landlord retain the security deposit of \$575.00, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$2,475.00 (\$3,050.00 - \$575.00).

Conclusion

I hereby issue an order of possession in favour of the landlord effective not later than **1:00 p.m., Sunday, July 31, 2011**. 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 \$2,475.00. 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.

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*.

DATE: July 19, 2011

Residential Tenancy Branch