

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 and / or were represented in the hearing and gave affirmed testimony.

The tenants' guarantor appeared at the hearing, however, despite being served by way of registered mail with the application for dispute resolution and notice of hearing (the "hearing package"), neither tenant appeared. Evidence submitted by the landlord includes the Canada Post tracking numbers for registered mailing to all 3 respondents.

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 first of what are 2 fixed terms of tenancy was from August 1, 2010 to May 31, 2011. Monthly rent of \$1,200.00 was payable in advance on the first day of each month, and a security deposit of \$600.00 was collected. "TW" and "BG" are named as tenants on the aforementioned tenancy agreement, while "DG" is named as the "co-signor," referred to here as the "guarantor." "TW," "BG" and "DG" all signed the applicable tenancy agreement.

Following the expiration of the above tenancy agreement, a new fixed term was entered into for the period from June 1, 2011 to January 31, 2012. Rent remained unchanged and the security deposit was carried forward from the previous tenancy agreement. However, while "TW" and "BG" signed the second tenancy agreement, "DG" did not. During the hearing "DG" testified that he had only very recently become aware of the second tenancy agreement, and he took the position that he was neither a "co-signor" nor a "guarantor" on the second tenancy agreement. The landlord's agent did not dispute "DG's" position, and she indicated that the landlord's clerical / support staff may have simply named all 3 individuals as parties to the current dispute without sufficiently careful reference to the second tenancy agreement which, as earlier noted, does not bear "DG's" signature.

On June 13, 2011, the tenants made a partial payment toward June's rent in the limited amount of \$900.00. Subsequently, the landlord issued a 10 day notice to end tenancy for unpaid rent which was originally dated June 10, 2011, but was manually amended to read June 14, 2011. The notice was served by way of posting on the tenants' door on June 16, 2011. Thereafter, on July 5, 2011 the tenants made one additional rent payment of \$350.00. No further payments have been made and the tenants continue to reside in the unit.

Analysis

Based on the documentary evidence and testimony, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated June 14, 2011. The tenants did not pay the full amount of overdue 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 \$1,250.00, comprised of \$300.00 in unpaid rent for June (\$1,200.00 - \$900.00), \$850.00 in unpaid rent for July (\$1,200.00 - \$350.00) and the \$50.00 filing fee. I order that the landlord retain the security deposit of \$600.00, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$650.00 (\$1,250.00 - \$600.00).

Conclusion

I hereby issue an order of possession in favour of the landlord effective not later than **two (2) days** after service on the tenants. 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 \$650.00. 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.

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 25, 2011

Residential Tenancy Branch