

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the respondents pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The landlord provided oral and written evidence that he gave the female respondent a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on July 17, 2011. He entered into written evidence a Proof of Service document witnessed by one of his business associates attesting to his service of the 10 Day Notice to the female respondent on that date. The business associate attested to her witnessing of the service of this document to the female respondent. The female respondent confirmed that the landlord handed her the 10 Day Notice on July 17, 2011. The landlord gave oral and written evidence that he served both respondents with copies of his dispute resolution hearing package by sending them these packages by registered mail. He provided Canada Post Tracking Numbers and Customer Receipts to confirm these mailings, which included amended notices adding the male respondent's name to his application. I am satisfied that the landlord served the 10 Day Notice to the female respondent and the dispute resolution hearing packages to both respondents in accordance with the *Act*.

At the hearing, I questioned the landlord about the differences in names cited on his 10 Day Notice and his application for dispute resolution. On the 10 Day Notice (and the Proof of Service document), the landlord showed the sole tenant's name as XYZ. In the application for dispute resolution, the female respondent's name was identified as CLG. At the hearing, the landlord testified that he had spelled the female respondent's name wrong on both the 10 Day Notice and the application for dispute resolution. The landlord and the female respondent agreed that her name was spelled as it appears above (i.e., CLG), which I have amended accordingly. The landlord also asked for permission to change the spelling of the male respondent's last name to "ABC," which I agreed to at the hearing.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the respondents?

Background and Evidence

The parties in attendance agreed that this periodic tenancy commenced with the female respondent on or about October 1, 2004. This original periodic tenancy covered only the basement suite for a monthly rental of \$750.00, payable in advance on the first of each month. There was no written residential tenancy agreement for this tenancy. She paid a security deposit of \$375.00 at that time, which the landlord subsequently returned to the female respondent in full plus applicable interest after she vacated the rental property on August 15, 2011.

The parties in attendance agreed that in September 2010 the landlord and the female respondent entered into an additional oral agreement to allow her and her male friend, the male respondent, to move to the upstairs rental unit. The new oral agreement that both parties in attendance testified was between the landlord and the female respondent provided the female respondent with responsibility and tenancy for the lower basement suite as well. The new monthly rent for this entire property was revised to \$2,100.00 when this new rental arrangement took effect as of December 1, 2010. At that time, the female and male respondents assumed responsibility for renting out the basement suite to new sub-tenants. Both parties in attendance agreed that the basement tenants paid rent to the respondents and the respondents were to pay \$2,100.00 in monthly rent to the landlord.

The parties in attendance agreed that the landlord advised the basement tenants that he would forego monthly rent for July 2011 because he was fixing their shower over this period. In foregoing this rent, he understood that the basement tenants were contributing the same \$750.00 that the female respondent had been paying prior to the change in the tenancy arrangement in 2010. The parties in attendance testified that the basement tenants were actually paying \$1,250.00 in monthly rent to the respondents.

The landlord gave undisputed testimony that he received \$850.00 in rent for this property, paid on July 8, 2011. As he considered his agreement to forego the basement rent to be at the monthly rate of \$750.00, he anticipated receiving \$1,350 for that month. Since he maintained that he did not receive the correct monthly rent for the property for July 2011, the landlord issued the 10 Day Notice to the female respondent he made the oral agreement with to rent all of this property (i.e., the female respondent who attended this hearing).

The landlord testified that he has not received any further rent for July 2011 or August 2011 for this property. The female respondent testified that the basement tenants have paid \$1,250.00 in monthly rent for August 2011 to the male respondent. She did not dispute the landlord's claim that the landlord has received no further rent for this property since July 8, 2011.

The landlord applied for an end to this tenancy, an Order of Possession, and a monetary award of \$500.00 for July 2011. At the hearing, he asked to amend the amount of his application for a monetary award to \$2,600.00, to reflect the unpaid August 2011 rent for this rental property.

Analysis - Order of Possession

Based on the evidence submitted, I am satisfied that the female respondent, listed as the tenant on the 10 Day Notice in accordance with the oral agreement that governed this tenancy, failed to pay the May 2010 rent within five days of receiving the 10 Day Notice to End Tenancy. She testified that she shared the 10 Day Notice with her co-habitant at that time, the male respondent, and neither of them made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. She said that the male respondent did obtain information from the Residential Tenancy Branch after she received the 10 Day Notice, but no application for dispute resolution nor payment of the \$500.00 requested was made to the landlord.

In accordance with section 46(5) of the *Act*, the female respondent's failure to take either of these actions within five days led to the end of this tenancy on the effective date of the notice. In this case, this required the tenant(s) to vacate the premises by July 28, 2011. As that has not occurred, I find that the landlord is entitled to an Order of Possession.

Since there is evidence that the sub-tenants have paid their full August 2011 rent to the male respondent, I issue a formal Order of Possession effective by 1:00 p.m. on August 31, 2011, which must be served on the tenant (i.e., the female respondent) and anyone residing on the premises. If the tenant and anyone residing on this entire rental property do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Analysis – Monetary Award

At the hearing, the landlord testified that his attempt to obtain a monetary award was directed at the male respondent who has been controlling the funds paid by the basement tenants and has been responsible for paying rent to him over the latter stages of this tenancy.

Although the landlord did include the male respondent in his amended application for dispute resolution and serve notice of this hearing to the male respondent, the parties in attendance testified that the oral agreement was between the landlord and the female respondent. I advised the parties in attendance that I would not issue a monetary award against an individual, the male respondent, who was not a party to the oral agreement that governed this tenancy. In that event, the landlord said that he was not interested in pursuing his application for a monetary award against the female respondent, the only party who made the oral agreement to rent this entire rental property from him.

Under these circumstances, I dismiss the landlord's application for a monetary award without leave to reapply.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on August 31, 2011. Should the tenant (i.e., the female respondent) and anyone residing on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the landlord's application for a monetary award without leave to reapply. I dismiss the landlord's application to recover his filing fee.

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*.