



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, FF

Introduction

This was the hearing of applications by the tenants and by the landlord. The tenants applied to cancel a 10 day Notice to End Tenancy for unpaid rent. The landlord applied for an order for possession, a monetary order and an order to retain the security deposit in partial satisfaction of the monetary order. The hearing was conducted by conference call. The landlord's representative and the landlord's caretaker participated on behalf of the landlord. The tenant, J.M., who also referred to himself as "legal advocate" for the tenants participated. The tenant W.R. was apparently present, but did not participate in the hearing. The tenant sought to lead evidence from the 16 year old son of the tenant, W.R. The evidence was not relevant to the sole issue raised by the tenant's application, namely: a request to cancel the landlord's Notice to End Tenancy for unpaid rent and I declined to hear the son's testimony.

Issue(s) to be Decided

Should the 10 day Notice to End Tenancy for unpaid rent be cancelled?

Is the landlord entitled to an order for possession?

Is the landlord entitled to a monetary order and if so, in what amount?

Background and Evidence

The rental unit is an apartment in Kelowna. The tenancy began on January 13, 2011. Monthly rent is \$950.00. The tenant paid a security deposit of \$480.00 on January 10, 2011. The tenant J.M. filled out an application for tenancy, but apparently no written tenancy agreement was prepared before the tenant paid a security deposit and a partial month's rent and took possession on January 13, 2011. The tenants did not pay rent for August. On August 16, 2011 the landlord served a 10 day Notice to End Tenancy by posting it to the door of the rental unit. On August 24, 2011 the tenant, W.R. applied to cancel the 10 day Notice to End Tenancy. By decision dated August 31, 2011 the tenant's application to cancel the Notice to End Tenancy was dismissed without leave to reapply. On August 31, 2011 the landlord and the tenant, J.M. signed an agreement

whereby the tenants agreed to vacate the rental unit by September 15, 2011. The agreement recorded that the tenants would pay \$500.00 as a partial payment towards rents for August and September and that they would pay the balance in a timely manner. The landlord's representative testified that the tenants paid the full rent due for July, but they have not paid the monthly rent due since July. The landlord received \$300.00 on August 31, 2011 and \$200.00 on September 1, 2011. The tenants have made no other payments since July. The landlord served the tenants with another 10 day Notice to End Tenancy for unpaid rent dated September 15, 2011. The tenant W.R. applied to cancel the Notice to End Tenancy on September 20, 2011. The tenant claimed that the landlord has refused to accept the rent, tried to enter the rental unit unlawfully and turned off the power to the rental unit.

The landlord submitted copies of receipts for rent payments made by the tenants for July rent. In the application the landlord claimed payment of the sum of \$1,990.00 including the retention of the security deposit. The landlord's representative said that \$450.00 was outstanding for August and the full amount of the rent was due for September and October. The tenant acknowledged that rent was owed and that the tenancy was over, but he said that other payments were made to the landlord in cash and no receipts were given. He did not provide any particulars of the alleged particulars and he insisted that it was the responsibility of the landlord to provide an accounting of the rent payments.

Analysis and conclusion

I did not find the tenant J.M. to be a credible witness; he was belligerent and argumentative; he pursued spurious arguments as to jurisdiction based on his unsupported contentions that the landlord was an Alberta corporation and that the rental unit was in fact a strata unit and that these matters, if true would deprive me of jurisdiction to hear these applications. These arguments were apparently advanced in an effort to avoid dealing with the merits of the landlord's Notice to End Tenancy for unpaid rent.

The August 31st agreement signed by the tenant supports the landlord's evidence as to the tenant's failure to pay rent; it amounts to an admission that rent was not paid for August or September, save for the \$500.00 payment recorded.

I find that the tenants have not provided any grounds that would justify cancelling the 10 day Notice to End Tenancy for unpaid rent dated September 15, 2011. The tenants' application to cancel the Notice is dismissed without leave to reapply and I find that the landlord is entitled to an order for possession pursuant to that Notice effective two days

after service on the tenants. This order may be registered in the Supreme Court and enforced as an order of that court.

I find that the landlord is entitled to an award in the amount of \$2,350.00 for unpaid rent of \$450.00 for August, \$950.00 for September and \$950.00 for October. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$2,400.00. I order that the landlord retain the security deposit of \$480.00 in partial satisfaction of the award and i grant the landlord a monetary order under section 67 for the balance of \$1,920.00. This order may be registered 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*.

Dated: October 19, 2011.

Residential Tenancy Branch