

Decision

Dispute Codes: OPR, MNR, MNDC, FF / CNR

Introduction

This hearing was convened in response to 2 applications: i) by the landlord for an order of possession / a monetary order as compensation for unpaid rent or utilities / compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee; ii) by the tenants for cancellation of a notice to end tenancy for unpaid rent or utilities. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether either party is entitled to the above under the Act, Regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the term of tenancy is shown as from July 12, 2011 to June 30, 2012. Monthly rent of \$795.00 is payable in advance on the first day of each month. A security deposit of \$300.00 and a pet damage deposit of \$200.00 are both shown on the tenancy agreement as having been collected on July 12, 2011. As well, the tenancy agreement itself is shown as having been signed on July 12, 2011.

Arising from pro-rated rent for the period from July 12 to 31, 2011, which remained unpaid in the amount of \$112.80 as at November 1, 2011, the landlord issued a 10 day notice to end tenancy for unpaid rent dated November 15, 2011. The notice was served by way of posting on the tenants' door on that same date. A copy of the notice was submitted into evidence. Subsequently, on November 23, 2011 the tenants filed an application to dispute the notice.

Consistent with what is shown on the tenancy agreement, as above, a copy of the landlord's "Resident Ledger" submitted into evidence by the landlord also shows that with the exception of the alleged shortfall in rent of \$112.80, the security and pet damage deposits were collected from the tenants on July 12, 2011. As well, the tenant testified that the landlord provided him with keys to the unit on July 12, 2011.

Thereafter, the tenant said that the unit keys and other personal keys in his possession were taken from him by his former landlord during an altercation with his former

landlord. The tenant then had to incur the cost of obtaining new keys for the unit and claims he did not begin moving into the unit until July 16, 2011.

The tenant claims that the agreement reached with the agent representing the landlord at the time when the tenancy agreement was signed on July 12, 2011, was that the tenants would take possession of the unit on July 15, 2011, not July 12, 2011. The tenant drew attention on the tenancy agreement to what appears to be a manual amendment of the start date to July 12, 2011, from what appears to have originally been July 15, 2011. The amendment appearing on the tenancy agreement is not accompanied by any initialing by either party.

Subsequent to issuance of the 10 day notice, the tenants have made no further payment toward July's allegedly outstanding rent, or any portion of rent for December 2011, and they continue to reside in the unit.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 16 of the Act addresses **Start of rights and obligations under tenancy agreement** and provides:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the unit.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenancy agreement was manually amended on July 12, 2011 in the presence of both parties, and that the original entry of July 15, 2011 as the start date to tenancy reflects nothing more than an inadvertent error. I further find that collection of the security deposit and pet damage deposit, as well as provision of unit keys all occurred on July 12, 2011. Following from all of the foregoing, I find that the tenancy began on July 12, 2011, and not July 15, 2011 as claimed by the tenant.

In relation to issuance of the 10 day notice, I find that even while the tenants applied to dispute the notice within the five (5) day period available for doing same, the tenants did not pay the outstanding amount of pro-rated rent for July 2011, or any portion of the full amount of rent due on December 1, 2011. In the result, I find that the landlord has established entitlement to an order of possession pursuant to section 46 of the Act which speaks to **Landlord's notice: non-payment of rent**.

As for the monetary order, I find that the landlord has established a claim of \$977.80, which is comprised as follows:

\$112.80: pro-rated / unpaid rent for July 2011

\$795.00: unpaid rent for December 2011

\$ 20.00: fee for late payment of rent

\$ 50.00: filing fee

Total: \$977.80

The landlord has not presently applied to retain the security or pet damage deposits.

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 **\$977.80**. 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: December 8, 2011

Residential Tenancy Branch