

DECISION

Dispute Codes OPR, MNR, MNSD, CNR, OLC, O

Introduction

There are applications filed by both parties. The Landlord is seeking an order of possession for unpaid rent, a monetary order for unpaid rent and to keep all or part of the security deposit to offset the unpaid rent. The Tenant has applied to cancel a notice to end tenancy for unpaid rent, an order for the Landlord to comply with the Act and

Both parties attended the hearing by conference call and gave testimony. Both parties have acknowledged receiving the one evidence package submitted by the other party. As such, I am satisfied that each party has been properly served with the notice of hearing and evidence packages under the Act.

The Tenant clarified during the hearing that the request for an order for the Landlord to comply was related to the monetary order received in another hearing. It was explained to both parties that the Tenant as stated in the original order, must seek enforcement of the monetary order in the Small Claims Division of the Provincial Court if the Landlord does not comply with it after being served with a copy. This portion of the Tenant's application is dismissed.

It was clarified during the hearing that the Landlord's monetary claim of unpaid utilities totalling, \$306.19 has not been established. The Landlord has not provided any evidence of unpaid utilities, or a written demand for the unpaid utilities. As such this portion of the Landlords claim is dismissed.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession for unpaid rent?
- Is the Tenant entitled to an order cancelling the notice to end tenancy for unpaid rent?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to retain all or part of the security deposit?

Background and Evidence

Both parties agree that this Tenancy began in July of 2011 and that there is no signed tenancy agreement. Both parties agree that the monthly rent is \$1,150.00 and that a security deposit of \$575.00 was paid.

The Landlord states that a 10 day notice to end tenancy for unpaid rent was personally served on the Tenant on March 3, 2012. The Tenant confirms this in their evidence and has filed an application to cancel this notice. The notice shows an effective move out date of February 13, 2012. The notice states that rent of \$450.00 was not paid that was due on March 3, 2012. The Landlord states that the Tenant failed to pay the outstanding \$450.00 amount. The Tenant stated in his direct testimony that they did not pay all of the rent. The Tenant states that an agreement was made to offset a monetary order that was awarded to them. The Landlord disputes this. The Tenant states that the Landlord did not dispute their offer to offset the monetary order against the monthly rent. The Tenant stated that the Landlord did not disagree with the offer and by doing so he accepted it. The Tenant has not provided any evidence of paid rent.

Analysis

As both parties have confirmed that the Landlord personally served the 10 day notice to end tenancy dated March 3, 2012 on the same day, I am satisfied that the Tenant was properly served.

The Tenant has not provided any evidence of rent paid. In fact the Tenant has provided in his direct testimony that they did not pay all of the rent. As to the Tenants assumption that the Landlord by not disagreeing with the offer to offset the monetary order against the monthly rent, I find not believable and as such find no credibility in this assumption of an agreement. The Landlord has established a claim for unpaid rent. The Landlord is entitled to a monetary order for unpaid rent of \$450.00. I order that the Landlord retain \$450.00 from the \$575.00 security deposit currently held in trust. The remaining \$125.00 is to be returned to the Tenant at the end of tenancy pursuant to the Residential Tenancy Act.

On the balance of probabilities based upon the evidence submitted by both parties, I find that the Landlord is entitled to an order of possession. The Tenant must be served with the order of possession. 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.

Conclusion

The Landlord is granted an order of possession.

The Landlord may retain \$450.00 from the security deposit.

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: March 27, 2012.

Residential Tenancy Branch