



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter was scheduled as a result of the tenants being granted a new hearing through the Review Consideration Process; the Arbitrator ordered that a new hearing be scheduled and heard. This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing. The landlord submitted extensive documentation which the tenants confirmed that they received. The tenants did not submit any documentary evidence for consideration. Both parties gave affirmed evidence.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

Background and Evidence

The landlord gave the following testimony:

The tenancy began on or about “two and a half years ago”. Rent in the amount of \$900.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$450.00. The tenant failed to pay rent in the month(s) of September – November 2015 and the landlord served the tenant with a notice to end tenancy. The tenant further failed to pay rent in the month(s) of December 2015 – April 2016. The landlord stated that the tenants began to fall behind in their rent in September 2015. The landlord stated that the tenants made some partial payments for which they were given receipts for use and occupancy only but were falling behind more and more each month.

The landlord stated that as of today’s hearing the amount of unpaid rent is \$4900.00.

The landlord stated that he always gave the tenants receipts when they paid in cash.

The landlord stated that the tenants were not being truthful in their testimony. The landlord stated that he served the tenants the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by slipping a copy under their door, posting a copy to their door and personally serving the female tenant. The landlord stated that the tenants are not being honest about the service of this document.

The tenants gave the following testimony. The tenants stated that they have paid all the rent and that there are no monies outstanding. The tenants stated that the landlord refuses to give them a receipt. The tenants stated that they have not received a copy of a notice to end tenancy. The tenants stated that they have a "lot of issues for the last eighteen months" with this landlord.

Analysis

This was a highly contentious hearing. The relationship between these two parties is an acrimonious one. I cautioned each party about their behaviour during the hearing. The female tenant was cautioned numerous times about her behaviour but she was more intent on engaging the landlord into a shouting match than answering questions. The female tenant was yelling so loudly that when I advised the parties, on three separate occasions, that the hearing was concluded and I was exiting the conference, she didn't hear or acknowledge me.

I accept the landlord's testimony and I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. The tenants stated that all of the rent had been paid but failed to provide any supporting documentation. In addition, I find that the female tenant was contradictory when giving testimony. She offered several versions of how and when she paid the rent, and then would then continue with her testimony and alter her statements. Based on the above facts 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.

As for the monetary order, I find that the landlord has established a claim for \$4900.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. Although the landlord's application does not seek to retain the deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the claim and I grant the landlord an order under section

67 for the balance due of \$4500.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$4500.00. The landlord may retain 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: April 12, 2016

Residential Tenancy Branch