

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession due to unpaid rent, a monetary order to recover rental arrears and inclusive of recovery of the filing fee associated with this application. Both the landlord and the tenant participated in the conference call hearing and were given an opportunity, under solemn affirmation, to provide truthful testimony. The tenant sought an interpreter in and for the Mandarin language to assist him in this hearing.

The tenant is still in possession of the rental unit, and the landlord orally requested an order of possession at this hearing.

Issues to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to an order of possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on September 28, 2003. Rent in the amount of \$400 is payable in advance on the last day of the month, for the month following. At the outset of the tenancy the landlord did not collect a security deposit from the tenant. The landlord provided testimony that the tenant failed to pay rent for the month of November 2008 and on November 10 the landlord served the tenant with a 10 Day notice to end tenancy for non-payment of rent. The landlord applied for Dispute Resolution on that matter and

the matter was dismissed due to improper service and the tenancy did not end. The tenant again did not pay rent for December, and again the landlord applied for dispute resolution. Soon after, the tenant chose to pay the rent for December and the landlord did not proceed to a hearing for dispute resolution, so the tenancy continued. The tenant, again, failed to pay rent for January (by December 31 2008) and the landlord served the tenant with a new 10 day notice to end tenancy on January 1, 2009, with an effective date of January 11, 2009. The tenant has further failed to pay rent for the month of February 2009. The landlord's testimony is that the tenant has not paid the outstanding rent for January and February 2009.

The tenant has not applied for dispute resolution to dispute this last notice.

According to the tenant and the landlord, this tenancy of nearly 5 years has been uneventful until the issue of rent for November 2008. This tenancy also has a history of the tenant always paying his rent in cash, and the landlord not issuing a receipt for the cash. The only month in which the landlord has ever issued a receipt to the tenant was for the rent paid for December 2008. The landlord testified that in October 2008, the tenant advised the landlord that from thereon he, "wanted a receipt for any rent he paid in cash, as he did not trust me anymore", and the landlord said he would oblige. However, the following month of November the tenant failed to pay rent for the first time in the tenancy, and thus no receipt was given. The landlord did issue a receipt for December, when the tenant next paid the rent, and insisted, along with a threat of Police, that he be given a receipt. The tenant testified he did not insist on a receipt for the previous month of November, after all, although he is adamant he paid the rent in cash. The tenant testified that he paid the rent for January and February, in cash, but does not have receipts to show for it. Of course, the landlord testified that the tenant should not have receipts as he would not have issued receipts for unpaid rent.

Analysis

At best, the testimony of both parties is in contrast, and is not well supported by either party. However, based on the testimony and evidence before me, I find that the tenant was served with a new notice to end tenancy for non-payment of rent from January 2009 and I find the notice to be valid.

The tenant has not paid the outstanding rent 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.

Based on the above facts I find that the landlord is entitled to an order of possession.

As for the monetary order, I find that the landlord has established a claim for **\$800** in unpaid rent for January and February. As the Landlord re-instated the tenancy in December, he cannot now claim rent for November 2008. The landlord is also entitled to recovery of the **\$50**

Conclusion

I grant an order of possession to the landlord effective February 28, 2008. Should the landlord choose to exercise this order, the tenant must be served with this order of possession. Once served, 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.

I grant the landlord an order under section 67 for **\$850**. Should the landlord choose to exercise this order and the tenant does not pay this amount, this order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord is not required to enforce both orders, in order to ensure the enforcement of one order in particular.

Dated February 12, 2009