

DECISION

Dispute Codes: OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order for unpaid rent.

Preliminary Matter

At the outset of the hearing, the landlord said that on January 16, the tenant paid him the outstanding January rent. Therefore, he was withdrawing his application for a monetary order for unpaid rent. I thereby dismiss the landlord's application for a monetary order for unpaid rent.

Issues to be Decided

Whether the tenant was served with a notice to end tenancy?

Whether the landlord is entitled to an order of possession?

Background and Evidence

On and about October 1, 2008, the landlord collected a security deposit from the tenant in the amount of \$455.00. The tenancy began on September 1. Rent in the amount of \$910.00 is payable in advance on the first day of each month. The tenant failed to pay rent in the month of January and on January 4, the landlord served the tenant with a notice to end tenancy for non-payment of rent.

Issue #1 – Whether the tenant was served with a notice to end tenancy?

The landlord said that on January 4, he first visited the main floor tenant, JM, to collect rent from him. Thereafter, he went upstairs to the tenant's unit to serve her with the notice to end tenancy. At the time, the tenant was not home. So he

placed the envelope containing the notice to end tenancy under the tenant's door.

The main floor tenant, JM, gave the following evidence regarding his January 4 visit by the landlord. On January 4, the landlord came to collect rent from him. At the time, the landlord had an envelope in his hand. The landlord briefly described the content of the envelope to be a notice to end tenancy and said that he was going to serve it on the upstairs tenant. The landlord then went upstairs. Afterwards, the landlord came back down to talk briefly with JM again. At that time, JM noticed that the landlord did not have the envelope in his hand anymore.

The tenant denied receiving the notice to end tenancy. She said that on January 4, she had a friend with her at her home and this friend could attest to not receiving such a document from the landlord on that day. The tenant did not have this witness ready to testify during the hearing. The tenant submitted a letter dated February 5, 2009 from JD. In this letter, JD stated that she was with the tenant the whole day of January 3 and that she did not witness any notice to end tenancy posted or around the tenant's door. I note that the landlord said that he had served the tenant with the notice to end tenancy on January 4 and not January 3.

Based on the above, I find the landlord to have proven that the tenant was served with a notice to end tenancy on January 4.

Issue #2 – Whether the landlord is entitled to an order of possession?

On January 4, the tenant was served with a notice to end tenancy for non-payment of rent. The tenant has not paid the outstanding rent within the prescribed time frame and has not applied 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. 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.

The landlord is entitled to recovery of the \$50.00 filing fee. I grant the landlord an order under section 67 for the balance due of \$50.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated February 18, 2009.