

Decision

Dispute Codes:

OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, hand delivered to the tenant on March 24, 2009.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me.

A witness appeared for the landlord and gave affirmed testimony.

Issue(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the landlord is entitled to an Order of Possession
- Whether the landlord is entitled to a Monetary Order to recover the filing fee

Background and Evidence

The landlord testified that the tenancy was based on a verbal agreement beginning December 1, 2008, was a month to month tenancy with a monthly rent of \$1,100.00 per month payable at \$250.00 per week, and the tenant was required to split the cost of the

utilities with the downstairs tenant. There was no security deposit or pet deposit paid by the tenant.

The tenant confirmed that he had entered into a verbal tenancy agreement with the landlord effective December 1, 2008, however he disputed the landlord's testimony in regards to the amount of rent. The tenant stated that the monthly rent began at \$1,000.00 per month payable at \$250.00 per week and that he was not aware, until later in January 2009, that he was responsible for paying ½ of the utilities.

The landlord testified that the tenant has not paid rent for January, February, March and April, 2009 and a 10 Day Notice to End Tenancy was served, in person at the rental unit, to the tenant on March 6, 2009 between 7:30 and 8:00 p.m., in the presence of the landlord's female friend. The landlord said that when she attempted to serve the notice on the tenant, that he threatened to beat her up with a stick and would not take the notice from her, so she threw it on the ground at her feet.

The tenant acknowledged receiving the 10 Day Notice to End Tenancy, in person on March 6, 2009, at his rental unit, from the landlord in the presence of a female, however he denied threatening the landlord with a stick.

The tenant testified that he was concerned that the landlord walked into his apartment to serve the 10 Day Notice to End Tenancy without requesting permission to do so.

The landlord stated that when they attended the rental unit to serve the notice, they first knocked on the door, when no one answered they rang the bell and someone other than the tenant answered the door and allowed them to enter. The landlord stated this is when the tenant became upset and threatened the landlord with a stick.

The landlord testified that the notice for the Application for Dispute Resolution was served in person to the tenant, at the rental unit, on March 24, 2009 at approximately 6:30 pm in the presence of the landlord's adult son and female friend.

The tenant could not remember how many months he has failed to pay his rent but did confirm that he is behind in his payments. The tenant testified that he took on two roommates to assist with paying the rent and that he had a verbal agreement with them where they would pay \$400.00 each and he would pay the utilities.

The landlord testified that when the two roommates moved in, the rent was increased to \$1,200.00 per month and each tenant would pay \$400.00 per month. The landlord stated that the rent became payable on a monthly basis, instead of weekly, because the two roommates were on Social Assistance and received a monthly cheque.

The witness for the landlord was called to the hearing and testified that she was the female who attended the rental unit with her Aunt, on March 6, 2009 and March 24, 2009, and witnessed the landlord serve the tenant with both the 10 Day Notice to End Tenancy and the Notice of the Dispute Resolution Hearing.

The landlord clarified that the female witness was not her relative or niece but a friend, and that in their culture; they refer to an older female friend as an Aunt.

Analysis

Order of Possession – I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the Act, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession.

The landlord is at liberty to enter into a new written tenancy agreement with the tenant's roommates if she so chooses.

Recovery of the Filing Fee - \$50 – I find that the landlord has succeeded in large and that she should recover the filing fee from the tenant.

Conclusion

The landlord has been granted an Order of Possession that is effective **two days upon service**. This order must be served on the tenant, once served; this Order can be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord has been granted a Monetary Order in the amount of \$50.00. This order must be served on the tenant, once served; this Order can be filed with the Provincial Court of British Columbia and enforced as an Order of that Court.

The landlord's copy of this decision is accompanied by the Order of Possession and Monetary Order which are to be served upon the tenant.

April 02, 2009
Date of Decision

Dispute Resolution Officer