



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes:

OPR, CNR, MNR, FF, SS, CNE, OPT, FF

Introduction,

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The tenant applied for an order to cancel the notice to end tenancy for an order of possession and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order for unpaid rent and the filing fee?

Background and Evidence

The landlord is a Quebec based company that was contracted to carry out work on B.C. dams. The tenant was employed by this company and moved from Quebec to B.C. to continue employment with the landlord. The employer (landlord) and the owner of the rental unit entered into a tenancy agreement on March 15, 2009. The monthly rent is \$1,750.00.

The employer provides accommodation for employees who have to travel during the course of their employment. The tenant moved into the rental unit on March 23, 2009. On May 19, 2009 the tenant's employment was terminated.

Landlord's Application

The landlord stated that the tenant was advised on May 19, 2009 that he was required to vacate the rental unit as his employment had ended.

On May 25, 2009, the landlord informed the tenant that the rental unit was required for a

new employee. The tenant advised the landlord that he would not vacate the rental unit until June 19, 2009 which would give him 30 days from the date of the termination of his employment, to make arrangements to move out.

In a letter dated May 27, 2009 sent via email and a process server, the landlord advised the tenant that since his employment had ended; the employer would not be paying rent on behalf of the tenant and agreed to allow him to stay up to June 19, 2009 if he paid his rent for that period. The tenant failed to pay rent and on June 25, 2009, the landlord served him with a ten day notice to end tenancy.

The tenant has not paid any rent since the termination of his employment with the landlord and the landlord is claiming rent for the months of June, July and August. The landlord is also claiming \$525.00 for costs of serving the tenant with the various notices and letters and \$100.00 for the filing fee.

Tenant's Application

The tenant stated that he had a verbal agreement with the landlord by which the landlord would provide accommodation for the tenant for a period of two years. The tenant stated that based on this agreement, his girlfriend moved to B.C. The tenant also stated that this was a verbal contract and therefore he did not have a written contract to support this alleged commitment on the part of the landlord. The landlord stated that there was no such verbal agreement. The tenant has applied for an order to cancel the notice to end tenancy and for an order of possession of the rental unit.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, the tenant stated that he had a verbal agreement with the landlord

regarding providing accommodation for a period of two years. The landlord denied that there was any such agreement. In the absence of evidence to support the tenant's claim, I find that on a balance of probabilities the landlord did not commit to providing accommodation to the tenant for a period of two years.

The tenant's employment with the landlord ended and pursuant to section 48(2) of the *Residential Tenancy Act*, an employer may end the tenancy of an employee in respect of a rental unit rented or provided by the employer to the employee to occupy during the term of the employment, by giving notice to end the tenancy, if the employment is ended. The tenant continued to reside in the rental unit but failed to pay rent and the landlord served the tenant with a ten day notice to end tenancy for non payment of rent.

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent.

If the tenant does not pay rent, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date.

The tenant received the notice to end tenancy on June 25, 2009 and did not pay overdue rent within five days of receiving the notice. Therefore, the notice is upheld and pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. This Order may be filed in the Supreme Court for enforcement.

I find that the landlord has established a claim of \$5,250.00 for unpaid rent for the months of June, July and August. Section 72 of the *Act* addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the *Act* does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the landlord is entitled to the filing fee of \$100.00 and the landlord's claim for the costs of mailing and serving documents is dismissed.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the

amount of \$5,350.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant has not proven his case and therefore his application for an order to cancel the notice to end tenancy and for an order of possession is dismissed. The tenant must bear the cost of filing his application.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant. I also grant the landlord a monetary order in the amount of **\$5,350**.

Dated August 14, 2009.

Dispute Resolution Officer