

Decision

Dispute Codes: OPR, MNDC, OLC, ERP, RP, RR, FF

Introduction

This hearing dealt with two applications: 1) from the landlord for an order of possession, and recovery of the filing fee; 2) from tenant “CRR” for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement, an order instructing the landlord to comply with the Act, regulation or tenancy agreement, make emergency repairs for health or safety reasons, make repairs, and permit a reduction in rent for repairs, services or facilities agreed upon but not provided.

The landlord presently withdrew the application for a monetary order as compensation for unpaid rent, compensation for damage or loss under the Act, regulation or tenancy agreement, and retention of the full security deposit, choosing to retain the option of filing a further application.

Agents for the landlord participated in the hearing and gave affirmed testimony. The tenants did not appear at the hearing, despite the fact that the hearing was scheduled in response not only to tenant “CRR’s” application, but in response to an application by the landlord. The landlord’s application for dispute resolution and notice of hearing were sent to the tenants by way of registered mail.

Issues to be decided

- Whether either party is entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

The written agreement in place for this month-to-month tenancy which began on August 11, 2008, consists of a manually written document dated August 11, 2008. Pursuant to this agreement, monthly rent is \$825.00 and a security deposit of \$412.50 was collected on August 11, 2008.

Agents for the landlord claim that documentation submitted by tenant "CRR" which purports to show that monthly rent was less than the amount above, or that a different amount from that shown above was collected for a security deposit, are not accurate representations of what was agreed to between the parties at the outset of tenancy. Further, the landlord's agents testified that signatures shown as "DC's" (agent representing the landlord) on documents submitted by the tenant in relation to rent and security deposit, are not bona fide, and they claim further that these documents were created by one or other of the tenants.

The landlord served the tenants with a 10 day notice to end tenancy for unpaid rent dated January 4, 2010. The notice was served by leaving a copy in the tenants' mailbox on that same day. Subsequently, the tenants have made no payment towards rent and they continue to reside in the unit. Agents for the landlord testified that rent is still outstanding for December 2009, as well as for January & February 2010.

Agents for the landlord dispute all aspects of the claims and allegations made by tenant "CRR" in her application for dispute resolution. They further claim that the tenants denied access to a plumber called by the landlord's agents to inspect some problems with plumbing that had been reported by the tenants.

Analysis

Based on the documentary evidence and undisputed testimony of the landlord's agents, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated January 4, 2010. The tenants did not pay the outstanding rent within 5 days of receiving the notice and did not apply to dispute the notice. The tenants are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy

ended on the effective date of the notice. Accordingly, I find that the landlord is entitled to an order of possession.

After reviewing the documentary evidence submitted by tenant "CRR," and in the absence of affirmed testimony from either tenant, I find there is insufficient evidence to support any aspect of the tenant's application. Accordingly, the application from tenant "CRR" is dismissed.

As for the monetary order, as the landlord has succeeded in the application for an order of possession, I find that the landlord is entitled to recover the \$50.00 filing fee by way of withholding that amount from the security deposit.

Conclusion

Pursuant to all of the above, I hereby issue an order of possession in favour of the landlord effective not later than **two (2) days** after service upon the tenants. This order must be served on the tenants. Should the tenants 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 hereby order that the landlord may withhold **\$50.00** from the security deposit in order to recover the filing fee.

DATE: February 15, 2010

Dispute Resolution Officer