

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

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

At the commencement of the hearing, I clarified both parties' understanding of the landlord's application. The male tenant who attended the hearing (the tenant) confirmed that he understood that the landlord was seeking an Order of Possession and a monetary Order in the amount of \$4,000.00 for unpaid rent. Although the landlord's agent had not correctly completed one portion of the application for dispute resolution, I accepted the testimony of the parties that the Details of the Dispute provided in the application for dispute resolution properly advised the tenants that the landlord was seeking an Order of Possession. In accordance with the *Act*, I allowed the landlord to amend this portion of the landlord's application to clarify that the landlord was seeking both an Order of Possession and a Monetary Order, as set out above.

The landlord's agent testified that she posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the gate at the front of the tenant's rental premises on August 5, 2011. She explained that the tenant's dog was in the yard when she attempted to serve the 10 Day Notice to the tenant and that this made it inadvisable to attempt to post the 10 Day Notice on the tenants' door. The landlord's agent said that she had a witnessed statement regarding her service of the 10 Day Notice in this manner and a photograph of this posting. She said that she had entered this material into written evidence for this hearing. Neither the tenant nor the RTB had copies of the witnessed statement or the photograph of the posting of the 10 Day Notice.

The tenant said that he never received the 10 Day Notice until the landlord served the tenants with a copy of the landlord's dispute resolution hearing package on August 28, 2011.

At the hearing, I advised the parties that I was not satisfied that the landlord's agent's posting of the 10 Day Notice on a gate at the front of the rental premises complies with

the service requirements as set out in section 89(2) of the *Act*. As such, I found that the 10 Day Notice was not served to the tenants.

The tenant confirmed that the landlord's agent handed him a copy of the landlord's dispute resolution hearing package on or about August 28, 2011. I am satisfied that this package was served to the tenants in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

This tenancy commenced on April 17, 2011. The terms of the tenancy were unclear as neither party provided a copy of the residential tenancy agreement. Monthly rent appears to have been set at \$2,000.00.

The landlord's application for a monetary Order of \$4,000.00 was for two month's rent that the landlord claimed was owing as of August 5, 2011. Since then, the landlord's agent testified that the tenant has not paid rent for September 2011, which resulted in \$6,000.00 in outstanding rent at the time of the hearing. The landlord did not submit an amended application for dispute resolution to increase the amount of the requested monetary Order, nor did the landlord pay the additional filing fee for seeking a monetary Order in excess of \$5,000.00.

The parties' written evidence was not filed within 7 days of this hearing. The tenant submitted evidence maintaining that the landlord had not complied with a number of provisions of the *Act*, particularly near the commencement of this tenancy. In his written evidence, he identified over \$5,500.00 in expenses or losses he has suffered during the course of this tenancy. The tenant confirmed that the tenants have not filed a separate application for dispute resolution seeking any monetary award.

The landlord's agent said that she provided 15 pages of written evidence, evidence that was not received by either the tenant or the Residential Tenancy Branch (RTB). The only written evidence of the landlord received by the RTB following the landlord's initial application was a one-page email received shortly before the hearing commenced.

Analysis

Pursuant to section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to settle their dispute on the following terms:

1. The parties agreed that the tenant will pay the landlord \$5,000.00 on or before October 15, 2011.
2. The landlord agreed to repair the basement living room window within two days of receiving the tenant's \$5,000.00 payment.
3. The parties agreed that as of November 1, 2011, the tenant will resume monthly payments as required under the terms of their residential tenancy agreement.
4. The parties agreed that in the event that the tenant does not comply with the monetary provisions of this agreement by October 15, 2011, this tenancy will end and the landlord will be allowed to obtain vacant and clear possession of the rental premise by 1:00 p.m. on October 17, 2011.
5. The parties agreed that if the tenant complies with the monetary terms of this agreement by October 15, 2011, this tenancy will continue.
6. The parties agreed that if the landlord does not conduct repairs to the basement living room window by a professional within three days of receiving the tenant's \$5,000.00 payment specified in this agreement that the tenant will be allowed to reduce his next monthly rent payment by \$500.00.
7. The parties agreed that this agreement represents a final and binding resolution of all issues in dispute between the parties arising out of this tenancy as of September 21, 2011, the date of this hearing.

Conclusion

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlord's favour in the amount of \$5,000.00. I deliver this Order to the landlord in support of the above agreement for use in the event that the tenant does not abide by the terms of the above settlement.

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible after October 15, 2011 if the tenant does not comply with the monetary terms of their agreement. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Orders of Possession to be used by the landlord if the tenant does not abide by the terms of their agreement. Should the tenant(s) fail to

comply with these Orders, these Orders may be filed and enforced as an Order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.