



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

Background and Evidence

Neither party was certain to the exact start of the tenancy however the tenant stated that he was living there for “about a year or so”. Rent in the amount of \$1000.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$500.00. The tenant failed to pay rent in the month(s) of January and on January 5, 2013 the landlord served the tenant with a notice to end tenancy. The tenant further failed to pay rent in the month(s) of February and March.

The tenant gave the following testimony:

The tenant acknowledges the unpaid rent for February and March. The tenant disputes the unpaid January claim as alleged by the landlord. The tenant paid cash for January's rent but was not given a receipt. The tenant was fully willing to pay the rent but due to emergency repairs that were required and were left neglected by the landlord was unable to. The tenant was not aware that the property had been sold and that new ownership had taken over. The tenant has “a stack of receipts for what I’m out of pocket on for this place”.

The landlord gave the following testimony:

The landlord disputes the claims made by the tenant. The landlord had made attempts to have serviceman and cleaners attend the unit but was refused by the tenants. The landlord has not been paid any rent from this tenant since taking possession of this property.

Analysis

The relationship between these two parties is an acrimonious one. Both parties were cautioned numerous times about their behaviour and demeanour during the hearing. At times the parties were in a highly charged screaming match with each making allegations of “liar and fraud” to each other. The parties were more intent on arguing with each other than answering questions or presenting their claim.

A large portion of the hearing was spent explaining the process to file an application for dispute resolution. It was made clear that today’s decision would only reflect the items that the landlord applied for and that both parties were at liberty at filing their own application if there are other issues that they are unable to work out amongst themselves if they so chose. They indicated that they understood and the hearing proceeded.

The landlord is the applicant in this matter and bears the responsibility of providing evidence to support his claim. The tenant acknowledged that he had not paid the February and March rent due, but felt he had justification to do so. During the hearing the landlord abandoned the claim for the January rent, accordingly I will deal only with the unpaid amounts for February and March.

I accept the landlord’s testimony and I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply 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.

As for the monetary order, I find that the landlord has established a claim for \$2000.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the \$500.00 deposit in partial satisfaction of the claim and I grant

the landlord an order under section 67 for the balance due of \$1550.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$1550.00. The landlord may retain the security deposit.

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*.

Dated: March 20, 2013

Residential Tenancy Branch

