



Dispute Resolution Services

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

Decision

Dispute Codes: OPR, OPB, MNR, MND, MNDC, MNSD, RP, PSF, LRE, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities, for compensation for damage or loss under the Act or tenancy agreement, for damages to the rental unit as well as to recover the filing fee for this proceeding. The Landlord also applied to keep all or part of a security deposit.

The Tenant applied for an Order requiring the Landlord to make repairs, to provide services or facilities required under the Act or tenancy agreement and to put restrictions on the Landlord's right to enter the rental property. The Tenant also applied for the return of a security deposit and to recover her filing fee for this proceeding.

Issue(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there arrears of rent and if so, how much
3. Is the Landlord entitled to compensation for damages and if so, how much?
4. Is the Landlord entitled to keep all or part of the Tenant's security deposit?
5. Is the Tenant entitled to an order that the Landlord make repairs or provide services or facilities?
6. Is the Tenant entitled to an order placing restrictions on the Landlord's right to enter the rental property?

Background and Evidence

This month to month tenancy started on September 1, 1997. There have been previous proceedings between these parties, namely under file #725597 heard on October 30, 2008 and under file #726436 heard on December 2, 2008. As a result of those decisions, the following facts were established:

- Rent for the rental property was \$1,250.00 for October, 2008;

- The Tenant sublet the basement suite of the rental property to another tenant who over held for the month of October without paying rent;
- The parties entered a new tenancy agreement on October 31, 2008 in which the Tenant agreed to pay rent of \$1,250.00 per month on the last day of each month;
- The Parties also entered into an agreement whereby the Tenant agreed to be responsible for ½ the cost of repairs to the basement suite (caused by her sub-tenant), ½ the outstanding amount of rent for October in the amount of \$650.00 and ½ of the Landlord's filing fee of \$50.00. The amount of damages to the basement suite was not determined at that time.
- The Parties agreed that the Landlord would pay for the repairs and the Tenant would try to recover these amounts from her sub-tenant and pay them to the Landlord, however, she would be responsible to the Landlord for ½ of those amounts and would pay them in installments of \$50.00 per month. Nothing has been paid to date.

The Landlord admitted that there was an agreement that the Tenant could pay the October, 2008 rent arrears in installments and therefore \$650.00 for October was not due on December 1, 2008. The Parties agree however that the Tenant has not paid November and December, 2008 rent. The Landlord served the Tenant in person on December 2, 2008 with a 10 Day Notice to End Tenancy for Cause dated December 2, 2008. The Tenant did not apply for Dispute Resolution to cancel the Notice but argued that she could not afford to pay the rent because she was unable to sublet the basement suite due to the Landlord's failure to repair it.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the amount set out on the Notice or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit at that time. Consequently, the Tenant would have had to pay at least November and December rent of \$2,500.00 or apply to dispute that amount within 5 days, or no later than December 7, 2008.

I find that the Tenant has not paid rent for November and December, 2008 and has not applied for dispute resolution. Consequently, pursuant to section 46(5), the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice or on December 12, 2008. The Landlord requested and I find she is entitled pursuant to s. 55(2)(b) of the Act to an Order of Possession to take effect on December 21, 2008.

As the tenancy has ended, I find that the Tenant's application for a repair order, to provide services and facilities and to put restrictions on the Landlord's right to enter the rental property is moot and those parts of her claim are dismissed. The balance of the claims made by Parties will be dealt with in another hearing currently scheduled for **January 23, 2009 at 1:30 pm.**

Conclusion

An Order of Possession effective December 21, 2008 has been issued to the Landlord. A copy of the Order of Possession must be served on the Tenant and may be enforced in the Supreme Court of British Columbia.