

## **Decision**

### **Dispute Codes:**

MND

MT

MNR

CNR

MNSD

FF

OPR

### **Introduction**

I have been delegated authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

File #729742 is the Landlord’s application for an Order of Possession for unpaid rent; a monetary order for unpaid rent; to keep all of the security deposit; a monetary order for damage to the rental unit; and to recover the filing fee for this application.

File #729743 is the Tenant’s cross-application to be allowed more time to make his application to cancel the Notice to End Tenancy, and if successful, to cancel the Notice to End Tenancy for unpaid rent or utilities.

Both of the parties were present at the Hearing and gave affirmed testimony.

### **Issue(s) to be Decided**

RE: File 729742

The issues to be determined based on the testimony and the evidence are:

- Whether the Landlord is entitled to an Order of Possession under section 55 of the Act, based on the Ten-Day Notice to End Tenancy dated November 18, 2008; and
- Whether the Landlord has proven that he is entitled to monetary compensation under section 67 for rental arrears or utilities owed and damages to the rental unit, and recovery of his filing fee for this application.

RE: File 729743

The issues to be determined based on the testimony and the evidence are:

- Whether the Tenant should be allowed more time to file his Application for Dispute Resolution, under section 66(1) of the Act; and if so
- Whether the Landlord's Notice to End Tenancy dated November 18, 2008 should be cancelled under section 46(4).

### **Background and Evidence**

The Parties agreed on the following facts:

- The Tenancy started on April 1, 2008.
- The monthly rent is \$1,000.00. Rent is due on the first of every month.
- The Tenant paid no security deposit.
- The Landlord served the Tenant personally with the Notice to End Tenancy dated November 18, 2008 on November 18, 2008.
- The Tenant is still occupying the rental unit.

### **Tenant's Evidence**

- The Tenant agreed that he was in arrears for making only partial payments towards rent for the months previous to November, 2008, together with rent for

the month of November, 2008. The Tenant stated that the owners of the rental unit hired a management company (the "Landlord") to administer the property in November of 2008. Prior to the management company taking over the administration of the Tenancy Agreement, the Tenant had a verbal agreement with the owners with respect to the rental arrears. The Tenant said that the Landlord failed to honour that agreement and served him with the Notice to End Tenancy on November 18, 2008.

- The Tenant said he offered to pay \$1,000.00 towards the December, 2008 rent on November 21, 2008, but that the Landlord refused to accept the payment.
- In support of his application to be allowed extra time to file his Application for Dispute Resolution, the Tenant entered into evidence a hand written note dated December 11, 2008 stating, in part, that he was "preoccupied with acquiring new accommodations (sic)", that he "did not know my rights", and that he was recently "informed that he (the Landlord) did not have the power to cancel the agreement between the owners and myself to continue living here".
- The Tenant stated that the Landlord entered the rental unit, uninvited and without due notice, on December 10, 2008, and that the Tenant subsequently called the police.

#### Landlord's Evidence

- The Landlord submitted that the Tenant is currently in arrears for unpaid rent in the amount of \$6,100.00. He stated that he refused to accept the Tenant's offer, made in November and given over the telephone, to pay \$1,000.00 towards rent due on December 1, 2008, because the Landlord did not agree to re-instate the Tenancy, which had ended effective November 28, 2008. The Landlord stated that the Tenant is currently in arrears for three full months (November, December and January).

- The Landlord submitted that the Tenant said he would move out, but didn't do so. On December 10, 2008, the Landlord went to see the rental unit because he wanted to inspect the house to confirm the Tenant had moved out. He knocked on the door, no one answered, so he tried the door. The door was unlocked, so he opened it, but did not enter the premises. The Tenant was home and got angry. The Landlord was afraid, left the premises and on December 11, 2008 served the Tenant with another Notice to End Tenancy for Unpaid Rent or Utilities.
- In the Landlord's filed evidence is a copy of a letter from the owners of the rental unit to the Tenant dated October 31, 2008, calculating the alleged arrears owing as at October 31, 2008, in the amount of \$3,100.00, as follows:

Date	Amount Due	Amount Received	Amount Outstanding
April 1, 2008 (rent)	\$1,000.00	April 28 paid \$300.00	\$700.00
April 1, 2008 (security deposit)	\$500.00	Nil	\$1,200.00
May 1, 2008 (rent)	\$1,000.00	May 11 paid \$1,500.00	\$700.00
June 1 - October 1/08 (rent)	\$5,000.00	\$2,600.00 in total	\$3,100.00

- This evidence was provided to the Tenant, along with the Landlord's other evidence on this case file, when the Landlord served the Tenant with the Notice of Dispute Resolution by registered mail on December 17, 2008.

### **Analysis**

RE: File 729743

With respect to the Tenant's application to allow more time to apply to cancel the Notice to End Tenancy dated November 18, 2008, section 66(3) of the Act states:

"The Director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice."

The 10 day Notice to End Tenancy was served on the Tenant on November 18, 2008. Therefore the effective date of the notice is November 28, 2008. The Tenant's application was filed on December 11, 2008, which is beyond the effective date of the notice, and therefore I dismiss the Tenant's application under section 66(1) of the Act for late filing of his Notice of Dispute.

RE: File 729742

There are two Notices to End Tenancy regarding this property, one dated November 18, 2008 and the other dated December 11, 2008. The Landlord's Application for Dispute Resolution and the Tenant's cross application relate to the Notice to End Tenancy dated November 18, 2008.

Section 46 of the Act states, in part:

"(1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I have dismissed the Tenant's application to apply to have more time to cancel the notice dated November 18, 2008. I have found the effective date of the notice is November 28, 2008, and therefore, pursuant to Section 46, the Tenant is presumed to have accepted that the tenancy ended on November 28, 2008.

Therefore, I find that the Landlord is entitled to an immediate Order of Possession.

The Tenant is still occupying the rental unit and is therefore overholding for the months of December, 2008 and January, 2009. Therefore, pursuant to section 57(3) of the Act, and I allow the Landlord compensation in the amount of \$2,000.00 for the months of December, 2008 and January, 2009.

The Landlord's claim for the amount owing of \$3,100.00 on October 31, 2008, includes \$500.00 for an unpaid security deposit. As the Tenant paid no security deposit, there is no security deposit to keep and I dismiss this part of the Landlord's claim.

The Landlord has been successful and therefore is entitled to be reimbursed for the filing fee in the amount of \$100.00.

I find that the Landlord has established a total monetary claim of \$5,700.00, comprised of rental arrears prior to October 31, 2008 in the amount of \$2,600.00 together with rent arrears in the amount of \$1,000.00 per month for November, 2008, \$2,000.00 compensation for the Tenant overholding for the months of December, 2008 and January, 2009, and the \$100.00 fee paid by the Landlord for this application.

The Landlord made no submissions with respect to damages to the unit and therefore I dismiss the Landlord's claim for a monetary order for damage to the unit.

### **Conclusion**

Under section 55 of the Act, and based on the above facts, the Landlord is entitled to an Order of Possession and I hereby issue the order. The Tenant will have two days from the date of service of the order to vacate the premises. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Based on the testimony and evidence presented during these proceedings, I grant the Landlord a monetary order under section 67 of the *Act* for \$5,700.00. This order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

January 12, 2009

---