



Dispute Resolution Services

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

Decision

Dispute Codes: OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession and a Monetary Order for unpaid rent, damages or loss under the Act, regulations or tenancy agreement, retention of the security deposit and recovery of the filing fee. The tenant did not appear at the hearing. The agent testified that he personally served the Notice of Dispute Resolution Hearing upon the tenant on December 31, 2008. As the tenant had provided evidence for the hearing and indicated she would not be in attendance, I am satisfied that the tenant was sufficiently served with Notice of the hearing. The tenant's submission did not indicate she was requesting an adjournment. The agent confirmed that he was also served with a copy of the tenant's evidence. Therefore, the hearing proceeded and I accepted the tenant's written submissions as evidence in making my decision.

Issue(s) to be Decided

1. Whether the landlord is entitled to an Order of Possession for unpaid rent.
2. Whether the landlord is entitled to a Monetary Order for unpaid rent and damages or loss under the Act, regulations or tenancy agreement, and if so, the amount.
3. Whether the landlord is entitled to retain the tenant's security deposit.
4. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony of the agent and upon review of the documentary evidence provided to me, I make the following relevant findings concerning the tenancy. The tenancy commenced in 2007 and the tenant is required to pay rent of \$1,500.00 on the 15th day of every month. A security deposit of \$750.00 was paid by the tenant on May 26, 2007. The agent personally served a *10 Day Notice to End Tenancy for Unpaid Rent and Utilities* (the Notice) upon the tenant's roommate on December 22, 2008. The Notice has an effective date of January 3, 2009 and indicates that the tenant must pay outstanding rent of \$9,000.00 within five days of receiving the Notice. The tenant did not dispute the Notice and the landlord affirmed that the tenant has not paid the outstanding rent since serving the Notice. The tenant continues to reside in the rental unit as of today's date; however, it appears the tenant is in the process of moving out.

The landlord is seeking unpaid rent of \$10,500.00 and provided an accounting of rent collected from the tenant since the tenancy began. The landlord also provided a copy of the tenancy agreement and the Notice served upon the tenant.

By way of written submission, the tenant claims that the landlord's calculations do not substantiate that she owes \$10,500.00 in rent. Rather, the tenant acknowledges that she owes \$6,000.00 for September through December 2008. Briefly, the tenant raised other issues in her written submission, including:

- Not receiving a copy of the tenancy agreement until December 2008
- That the tenant is not required to pay the landlord for hydro
- That the tenant does not have a roommate
- The tenant's limited income and inability to pay rent any faster
- Previous offers to pay rent with share certificates
- The condition of the rental unit
- Harassment by the landlord

The agent affirmed that the monetary claim does not include charges for hydro and that he has provided the tenant several opportunities to pay rent late and in lump sums but that the last time the tenant paid any monies towards rent was June 2008. The agent testified that the person he served with the Notice to End Tenancy had appeared to be residing with the tenant in the rental unit for the last couple of months.

Analysis

In consideration of the submissions of both parties, I have considered the service of the Notice to End Tenancy. Section 88 of the Act permits a party to serve documents upon the other party in several different ways, including:

- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

Although the tenant made a written statement that she does not have a roommate, the tenant did not appear at the hearing and I was unable to ask her further questions. I also note the provision of section 88(e) only requires that the person served with the documents be an adult that apparently resides with the tenant. I am satisfied from the testimony of that the agent that the Notice was served upon an adult who apparently resides with the tenant. Therefore, I find that the landlord sufficiently served the Notice to End Tenancy upon the tenant in accordance with the requirements of the Act.

Where a tenant is served with a Notice for unpaid rent, the tenant has five days to either pay the outstanding rent, as stated on the Notice, or dispute the Notice. If the tenant does not pay the rent or dispute the Notice, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date and must vacate the rental unit by that date. In this case, the tenant did not dispute the Notice or pay the outstanding rent within five days.

I find the tenancy ended on January 3, 2009 and since the tenant has not fully vacated the rental unit as of today's date, the landlord is entitled to an Order of Possession. I provide an Order of Possession for the landlord with this decision effective two days after service upon the tenant. The landlord may file the Order of Possession with the Supreme Court of British Columbia to enforce as an Order of that court.

I have reviewed the landlord's accounting of the rent owed to the landlord and I have reviewed the evidence submitted by the tenant. The evidence submitted by both the landlord and tenant indicate that since August 2007 the tenant gave the landlord cheques totalling \$18,000.00. The landlord's evidence shows that two of the rent payments were returned for non-sufficient funds. The tenant's submission does not make any mention of two rent cheques being returned for non-sufficient payment. In reviewing all of the payments made by the tenant, I prefer the landlord's submission that two of the rent cheques were returned. Therefore, I find that the tenant has paid the landlord a net amount of \$15,000.00 (\$18,000.00 - \$1,500.00 - \$1,500.00)

I further calculate that there were 17 rental months from August 2007 through December 2008 which equates to a total of \$25,500.00 in rent payable by the tenant. Applying the net payments of \$15,000.00, the balance owing by the tenant is \$10,500.00 which agrees to the amount being claimed by the landlord for unpaid rent. Therefore, I approve of the landlord's claim for unpaid rent of \$10,500.00.

I find that the other issues raised by the tenant do not impact my decision with respect to issuing an Order of Possession or Monetary Order. With respect to the tenant's allegations regarding the condition of the rental unit, not receiving a copy of the tenancy agreement within 21 days of the tenancy commencing, and harassment by the landlord, these issues are not relevant to the issue of paying rent as section 26(1) of the Act states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the tenant did not have the lawful right, such as by order of a Dispute Resolution Officer, to withhold rent from the landlord. Where the tenant wishes to seek remedy for other matters related to the tenancy, the tenant will have to make an Application for Dispute Resolution. Since the landlord is not seeking hydro costs in addition to rent, the matter of hydro costs is not an issue for me to consider with this decision. I reject the tenant's position that the landlord was obligated to accept share certificates in lieu of money for the rent owed to the landlord. Had the share certificates been worth as much as the rent owed, it is uncertain why the tenant did not realize the value of the share certificates herself and then pay the landlord the rent owed with the proceeds. Finally, the tenant's inability to pay rent when due is not a basis to deny the landlord's monetary claim where he has sufficiently shown that he is entitled to the unpaid rent under the terms of the tenancy agreement.

The landlord also raised the issue of potential loss of rent for January 2009. As the landlord's claim includes rent owed for December 15, 2008, the next rental month commences January 15, 2009, and the landlord has not yet incurred a loss of rent for January 15, 2009. Therefore, I do not award the landlord for loss of rent for January 15, 2008 with this decision. Should the landlord incur a loss of rent as of January 15, 2009, despite the landlord's best efforts to minimize his loss of rent, the landlord may make another Application for Dispute Resolution.

In light of the above findings, I also authorize the landlord to retain the tenant's security deposit and accrued interest in partial satisfaction of the rent owed. As the landlord was

successful with this application, I award the filing fee to the landlord. I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent up to and including December 15, 2008	\$ 10,500.00
Filing fee	100.00
Less: security deposit and interest	<u>(768.13)</u>
Monetary Order	<u>\$ 9,831.87</u>

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord was successful with this application. The landlord is provided an Order of Possession effective two (2) days after service upon the tenant. The landlord is provided with a Monetary Order in the amount of \$9,831.87.

January 8, 2009

Date of Decision

Dispute Resolution Officer