



Dispute Resolution Services

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

Decision

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

Introduction

This hearing dealt with the landlord's application for an Order of Possession for cause, a Monetary Order for loss of rent, retention of the security deposit and award of the filing fee. The tenant did not appear at the hearing. The landlord provided evidence that the tenant was served with notification of the hearing, Application for Dispute Resolution and evidence for the hearing by registered mail sent to the tenant at the rental unit address. The landlord provided receipts and tracking numbers for the registered mail sent to the tenant. The landlord testified that two of the three registered letters were returned as unclaimed by the tenant. I was satisfied that the landlord served the tenant with notification of today's hearing in accordance with the Act and proceeded with the hearing without the tenant present.

Issue(s) to be Decided

1. Whether the landlord is entitled to an Order of Possession for cause.
2. Whether the landlord is entitled to a Monetary Order for loss of rent, and if so, the amount.
3. Whether the landlord may retain the tenant's security deposit.
4. Award of the filing fee.

Background and Evidence

The landlord submitted that in November 2008 the tenant and a female co-tenant moved in to the rental unit. Both the tenant and a female co-tenant are named as

tenants on the tenancy agreement provided as evidence. The tenancy agreement includes a crime-free housing addendum signed by the tenant stipulates that the tenants agree that the tenants shall not engage in illegal activities on the premises, including assault. The landlord testified that on December 12, 2008 the tenant assaulted the female co-tenant. The female co-tenant was taken to the hospital and the tenant was arrested. A peace bond was issued. Shortly after the assault, the female co-tenant and the Crown Counsel spoke with the landlord and informed the landlord that the female co-tenant would not be returning to the rental unit. The female co-tenant has never returned to the rental unit. The landlord personally served the tenant with a *1 Month Notice to End Tenancy for Cause* (the Notice) on December 15, 2008. The tenant did not dispute the Notice. The Notice has an effective date of January 31, 2009 and indicates the reason the tenancy is ending is because:

- The tenant ... has significantly interfered with or unreasonably disturbed another occupant or the landlord of the rental unit, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk.

I was provided evidence that rent is \$670.00 per month and a \$335.00 security deposit had been paid on or about November 19, 2008. The landlord testified that the tenant was about to move out at the end of January 2009 but then did not move and still resides in the rental unit. The landlord testified that the tenant paid rent for January 2009 but has not paid for any use or occupation since then. By way of this application, the landlord is seeking to recover loss of rent in the amount of \$1,340.00 for the months of February and March 2009.

The landlord is seeking an Order of Possession as soon as possible.

Analysis

Upon hearing the undisputed testimony of the landlord, I am satisfied that the female co-tenant informed the landlord that she would not be returning to the rental unit and the landlord accepted and acted upon that information in naming only the remaining tenant on the Notice to End Tenancy.

The Notice to End Tenancy served upon the tenant is an older form not currently in use; however, the form contains the information required on the current form and I find that its use is not misleading. Therefore, I accept that the Notice to End Tenancy served upon the tenant is valid and enforceable.

Where a tenant receives a Notice to End Tenancy for Cause, the tenant has 10 days to dispute the Notice, otherwise the tenant is conclusively presumed to have accepted the Notice and must vacate the rental unit. As the tenant did not dispute the Notice, I find that he accepted that the tenancy would end as of January 31, 2009 and he was required to vacate the unit. As the tenant continues to occupy the rental unit, the landlord is entitled to an Order of Possession. I provide an Order of Possession effective two days after service upon the tenant. The landlord may enforce the Order of Possession through The Supreme Court of British Columbia.

As the tenant did not vacate the rental unit and has continued to reside in the unit, I am also satisfied that the landlord has established an entitlement to recover loss of rent in the amount of \$1,340.00 for the use and occupation of the unit for the months of February and March 2009. I also award the landlord the filing fee for making this application. In partial satisfaction of these awards, the landlord is authorized to retain the security deposit and interest.

I provide the landlord with a Monetary Order, calculated as follows:

Loss of rent – February and March 2009	\$1,340.00
Filing fee	50.00
Less: security deposit and interest	<u>(335.59)</u>
Monetary Order	\$1,054.41

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 tenancy ended January 31, 2009 and the landlord is provided an Order of Possession effective two days upon service upon the tenant.

The landlord is authorized to retain the tenant's security deposit and interest in partial satisfaction of the loss of rent owed to the landlord. The landlord is also provided with a Monetary Order in the amount of \$1,054.41.

March 18, 2009

Date of Decision

Dispute Resolution Officer