



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

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

Introduction

This hearing was scheduled to hear cross applications. The tenant applied to cancel a Notice to End Tenancy for Unpaid Rent. The landlord requested an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, loss of rent, retention of the security deposit and recovery of the filing fee. Both parties appeared at the hearing and were provided an opportunity to be heard.

Preliminary issues included existence of a co-tenant and service of the Landlord's Application for Dispute Resolution upon that person. The tenant asserted and there is a co-tenant that was identified on the tenancy agreement and that the person has been residing in the rental unit approximately six months. The landlord claimed that only one tenant is identified on the tenancy agreement. Neither party produced a copy of a tenancy agreement for my review. I make no determination as to whether the other person residing in the rental unit with the tenant is a tenant or an occupant as after I heard that the occupant or co-tenant was not adequately served with the Landlord's Application for Dispute Resolution it would violate the principles of natural justice to issue orders against a person not adequately served. Therefore, this decision and accompanying orders name only the tenant served with notice of the landlord's application.

Issues(s) to be Decided

1. Is there any basis to cancel the Notice to End Tenancy for Unpaid Rent?
2. Landlord's entitlement to an Order of Possession and the effective date of such order.

3. Landlord's entitlement to a Monetary Order for unpaid rent and loss of rent and the amount of such order.
4. Retention of the security deposit and accrued interest on security deposit.
5. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony, I make the following findings. The tenancy commenced in March 2006. The tenant paid a \$500.00 security deposit at the commencement of the tenancy agreement. The tenant is required to pay rent of \$1,000.00 per month. The tenant failed to pay rent for May 2009. The landlord issued a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) dated May 8, 2009. The Notice identifies only the tenant named in this decision, has an effective date of May 17, 2009 and indicates rent of \$1,000.00 was due May 1, 2009. The tenant and co-tenant disputed the Notice on May 13, 2009 which is within five days of receiving the Notice. On May 26, 2009 the parties reached a mutual agreement to end the tenancy as of 1:00 p.m. on June 30, 2009 and documented the agreement in writing.

The tenant testified that she did not pay the rent for May 2009 as the City of Vancouver had denied the landlord's application for a business license to operate a rental dwelling. The tenant had submitted a copy of the letter from the city as evidence for the hearing. The tenant submitted that this eviction was unexpected and unfair as she should be compensated for the end of her three year tenancy and the improvements made to the property.

The landlord testified that they were no longer seeking loss of rent for June and only May 2009 and felt this was fair compensation for the tenant. The tenant felt fair compensation would be to relinquish her security deposit only in lieu of paying rent for May 2009.

The landlord is seeking an Order of Possession effective June 30, 2009 at 1:00 p.m. in accordance with the mutual agreement reached between the parties.

Analysis

In recognition of the mutual agreement reached between the parties, the landlord is entitled to an Order of Possession effective June 30, 2009 at 1:00 p.m. I provide an Order of Possession to the landlord to serve upon the tenant. The Order of Possession may be enforced in the Supreme Court of British Columbia.

Upon hearing the testimony of both parties, I am satisfied that the tenant was required to pay \$1,000.00 in rent every month pursuant to the terms of the tenancy agreement between the parties. Under section 26 of the *Residential Tenancy Act*, a tenant must pay rent in accordance with the terms of the tenancy agreement whether or not a landlord complies with the Act, regulations or tenancy agreement, unless the tenant has the legal right to reduce rent. I find no basis in the *Residential Tenancy Act* to warrant a reduction in the rent owing for May 2009. As the parties were informed during the hearing, the City of Vancouver does not have jurisdiction to determine whether rent is payable by a tenant to a landlord under a tenancy agreement and upon review of the letter, I note that the city did not instruct the tenant to withhold rent. Further, the Act does not provide for compensation payable to tenants based on the length of their tenancy or improvements they make on their own accord unless for emergency repairs. "Emergency repairs" is a narrowly defined term in section 32 of the Act and I did not hear the tenant allege she made repairs that would constitute emergency repairs.

In light of the above findings, the landlord has established an entitlement to rent of \$1,000.00 for the month of May 2009. I authorize the landlord to retain the tenant's security deposit and accrued interest in partial satisfaction of the rent owing. I also



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grant the landlord's request for recovery of the filing fee. Since the landlord has waived its entitlement to loss of rent for June 2009 I provide the landlord with the following Monetary Order:

Unpaid rent – May 2009	\$ 1,000.00
Loss of rent – June 2009	nil
Less: security deposit and interest	(517.29)
Filing fee	<u>50.00</u>
Monetary Order	<u>\$ 532.71</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 tenant, and any other occupant, must vacate the rental unit and the landlord is provided an Order of Possession effective June 30, 2009 at 1:00 p.m.

The landlord is authorized to retain the tenant's security deposit and interest in partial satisfaction of the rent owed for May 2009. The landlord is also provided with a Monetary Order in the amount of \$532.71 to serve upon the tenant.

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: June 19, 2009.

Dispute Resolution Officer