

DECISION

Dispute Codes OPC, OPR, MNR, MNSD, FF

Introduction

This hearing was convened by conference call this date to deal with the landlord's application for an Order of Possession for cause, an Order of Possession for unpaid rent, a monetary order for unpaid rent, and an order permitting the landlord to retain the security deposit in partial satisfaction of the claim.

Despite having been served with the application for dispute resolution and notice of hearing personally on February 20, 2010, the tenant did not participate in the conference call hearing.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

This tenancy began on December 21, 2009. On December 16, 2009 the tenant paid a security deposit in the amount of \$325.00. Rent in the amount of \$650.00 is due on the 1st day of each month. At the outset of the tenancy, the tenant paid \$650.00, but made no rent payment in January, 2010. On February 1, 2010, the tenant paid \$650.00, but paid \$570.00 for the month of March, 2010. The landlord is claiming \$240.00 for the partial month of December, 2009 and \$80.00 for arrears for March, 2010.

The landlord testified that the tenant has allowed 4 or 5 people to reside in her unit. The unit is a basement suite and the landlord resides in the upper unit of the dwelling. The landlord also testified that the tenant was required to call the police on at least 2 occasions because her ex-husband attended her home and assaulted her. The landlord also testified that people visit with the tenant in the middle of the night, and there are constant parties and noise coming from that suite, in addition to marijuana smoking in the unit. She claims that she and her family have been unreasonably disturbed.

On February 6, 2010, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for \$300.00 owing on February 1, 2010, but failed to put a date on the form to advise the tenant of the expected move-out date.

On the same date, February 6, 2010, the landlord also served the tenant with a 1 Month Notice to End Tenancy for Cause with an expected move-out date of February 28, 2010. That notice states that the tenant has allowed an unreasonable number of occupants in the unit, has significantly interfered with or unreasonably disturbed another occupant or the landlord, and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Analysis

Based on the landlord's testimony, I find that the tenant was served with the 1 Month Notice to End Tenancy for Cause by posting it to the door of the residence. That notice is deemed to be served 3 days after posting it, and I find that the tenant was deemed to be served on February 9, 2010. However, the date of expected vacancy of the unit is incorrect, as it does not comply with Section 47(2) of the *Residential Tenancy Act*:

- 47(2)** A notice under this section must end the tenancy effective on a date that is
- (a) not earlier than one month after the date the notice is received, and
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The *Residential Tenancy Act* further states that:

- 53** (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.
- (2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Pursuant to those sections, I find that the expected date of vacancy on the 1 Month Notice to End Tenancy for Cause would be March 31, 2010.

With respect to the monetary claim, I find that the tenant was obligated to pay a pro-rated amount of rent for the month of December, 2009. The monthly rental amount, being \$650.00, divided by 31 days in the calendar month, multiplied by 11 days of the tenancy, in my calculation, would be \$230.00.

Conclusion

Based on the above facts, I find that the landlord is entitled to an Order of Possession. The tenant must be served with the Order of Possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As for the monetary order, I find that the landlord has established a claim for \$310.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the security deposit and interest in the amount of \$325.00 in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$35.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: March 31, 2010.

Dispute Resolution Officer