

DECISION

Dispute Codes

For the tenant – O

For the landlord - OPR, OPC, MNR, MNDC, MNSD, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlords. Both files were heard together. The tenant seeks to resolve issues with the landlord seeking to evict her from the rental property as it is an illegal suite. The landlord seeks an Order of Possession for unpaid rent and for cause. The landlord seeks a Monetary Order for unpaid rent and seeks an Order to keep the security and pet damage deposits and recover the filing fee. The landlord withdrew his application for a Monetary Order for Money owed or compensation for damage or loss under the Act.

The tenants served the landlord by registered mail with a copy of the application and a Notice of the Hearing. The landlord served the tenants in person with a copy of the Application and Notice of Hearing the tenant attending confirmed receipt of this. The landlord amended his application by including dates the notices were given to the tenant and sent this to the tenant by registered mail on April 14, 2010. This was uncollected by the tenant. However, the tenant was deemed to be served the amended documents the fifth day after they were mailed as per section 90(a) of the *Act*. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

The female tenant appeared for the hearing as the sole tenant of the rental unit as her son has since moved out. The landlords' husband appeared and two agents appeared. All Parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

Tenants application

- Is the landlord entitled to evict the tenant from the rental unit as it is an illegal suite?

Landlords application

- Is the landlord entitled to an Order of possession for unpaid rent?
- Is the landlord entitled to an Order of possession for cause?
- Is the landlord entitled to a Monetary Order for rent owed?
- Is the landlord entitled to keep the security deposit and pet damage deposit?

Background and Evidence

Both Parties agree that this month to month tenancy started on February 01, 2010. Rent for this unit is \$800.00 and is due on the first of each month. Both Parties agree that the tenant paid a security deposit of \$400.00 on January 27, 2010 and a pet damage deposit of \$200.00 on January 27, 2010.

The landlords' application

The landlord's husband testifies that the tenant was served with a One Month Notice to End Tenancy on March 15, 2010. The landlords' husband claims he tried to serve the tenant in person with this notice but she would not open the door and swore at him so he posted the notice to the door. The reasons given on this notice are that:

- 1) The tenant is repeatedly late paying rent
- 2) the tenant has allowed an unreasonable number of occupants in the unit/site
- 3) the tenant or a person permitted on the property by the tenant has
 - a) Seriously jeopardized the health, safety or lawful right of another occupant or the landlord
 - b) put the landlords property at significant risk
- 4) Rental unit/site must be vacated to comply with a government Order
- 5) Security or pet damage deposit was not paid within 30 days as required under the tenancy agreement.

The landlord claims the tenant has not paid rent for March and April, 2010. The landlord claims the tenant has allowed too many homeless people to live in the unit. The landlord claims the

tenants allows drug dealings to take place from the unit and the police have been called out on a number of occasions. The landlord's agent claims a City Bi-Law Enforcement Officer visited the property with him and members of the RCMP. As the suite is an illegal suite they wanted the landlord to evict the tenants by March 20, 2010. The landlord agrees during the hearing that the tenants did pay a security deposit and agrees they did pay a pet damage deposit.

The landlord's agent testifies that the tenant paid \$575.00 towards her rent for March, 2010. The tenant did not pay the outstanding amount of \$225.00. The tenant did not pay rent for April, 2010 of \$800.00 and the landlord states the tenant was served in person with a 10 Day Notice to End Tenancy for unpaid rent on April 08, 2010. The tenant did not pay the outstanding rent or apply to dispute the 10 Day Notice within five days of receiving the Notice. The landlord's agent asked to amend the amount owed by the tenant as the amount of monthly rent has now been agreed as \$800.00. This amendment has been allowed and the amount of outstanding rent has been amended to \$1,025.00.

Another agent for the landlord joined the conference call and testifies that he served the tenant with the 10 day Notice and informed the tenant of her rights under the Act to dispute the Notice and told her she must dispute it within five days. This agent testifies that he explained the consequence to the tenant if she failed to dispute the notice. The agent claims that he also explained that the hearing would be a joint hearing with both applications. This agent claims the tenant listened to his comments and advice and said she would go to the service centre to dispute the Notice.

The landlord seeks an Order of Possession for the 10 Day Notice and for the One Month Notice. The landlord requests a Monetary award for \$1,025.00 for unpaid rent and to recover the \$50.00 filing fee. The landlord requests to keep the security and pet damage deposits in partial satisfaction of the claim.

The tenant testifies that she did not receive the One Month Notice for Cause. The tenant agrees that she did receive the 10 Day Notice for unpaid rent and testifies that on March 15, 2010 she attempted to pay the rent owed to the landlord when the landlords' husband turned up with the RCMP and a bi-law enforcement officer but the landlords' husband refused to take it. The tenant claims she could not pay rent for April, 2010 as the landlord had telephoned Social Services, who paid rent on her behalf, and informed them that she was no longer living at the

rental unit. Due to this Social Services stopped her rent payments and she had no other source of income to pay her rent. The tenant claims she contacted Social Services and was told she must get the landlord to sign an 'Intent to Rent' form. However the tenant claims the landlord refused to do this.

The tenants' application

The tenant testifies that the landlords' husband came to her rental unit on March 15, 2010 with the Police and the city bi-law enforcement officer. The tenant was informed that she was living in an illegal suite and she had to leave the premises by 3.00 p.m. that day. The tenant does not dispute the landlords' husbands' testimony or the reasons given on the One Month Notice to End Tenancy however she states the landlord could not evict her at this time as he knew the suite was illegal. The tenant states that by the landlords' husband not accepting her outstanding rent on this day he was using it as an excuse to evict her because the City was charging them \$200.00 per day until the tenant left the rental unit.

The tenant has not disputed either the One Month Notice to End Tenancy served on March 15, 2010 or the 10 Day Notice served on April 08, 2010. The tenant agrees that she did have a conversation with the landlords' agent who served her with the 10 Day Notice but claims she thought she had disputed the Notice because she had already filed an application for Dispute Resolution.

The landlords' husband argues that the tenant did not pay him the rent on March 15, 2010, the landlords' husband testifies that the tenant said she would pay it but did not offer it to him. The landlord has provided police file numbers for the incidents involving the tenant.

The landlords' agent testifies that the landlord did not want to reinstate the tenancy and if he had filled in an 'Intent to Rent' form for Social Services it would have indicated to them that the tenancy was continuing. The landlords' agent states that the tenant was made fully aware of her options when he gave her the 10 Day Notice to End Tenancy and the landlords' agent states the tenant should have given Social Services the 10 Day Notice as proof that she still resided at the rental unit so her rent payments could have continued for that month. The landlords' agents were called in by the landlords' husband to act on their behalf after he was told by the Police he should have no more contact with the tenant after she made allegations against him.

Analysis

The landlords' application

I have carefully considered all the evidence before me, including the affirmed evidence of all parties at the hearing. With regards to the landlords claim that the tenants owes rent for March and April, 2010 the tenant does not dispute that she owes rent for these months. However, I find it is the tenants' responsibility to ensure that rent is paid on the day it is due pursuant to section 26(1) of the Act regardless of where the rent money comes from. Consequently, I find the landlord is entitled to a Monetary Order to recover the unpaid rent of **\$1,025.00**.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice.

I also accept that the tenant was served with a One Month Notice to End Tenancy for cause which was posted to the tenants' door pursuant to section 88 of the Act. Section 90 of the Act states that a document served under section 88 is deemed to have been served three days after posting to the door. Consequently, I find the tenant was served with the One Month Notice to End Tenancy on March 18, 2010. The tenant had 10 days from this date to dispute this notice but failed to do so.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 47(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As the 10 Day Notice supersedes the One Month Notice I will base the Order of Possession on the 10 Day Notice to End Tenancy for unpaid rent.

As a result I find the landlord is entitled to an Order of Possession and the Order of Possession has been issued to take effect two days after service upon the tenant.

I Order the landlord to keep the tenants security and pet damage deposits of **\$600.00** in partial satisfaction of their claim pursuant to section 38(4)(b).

As the landlord has been successful with her claim I find she is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the Act.

A Monetary Order has been issued for the following amount:

Unpaid rent for March and April, 2010	\$1,025.00
Subtotal	\$1,075.00
Less security and pet damage deposits	\$600.00
Total amount due to the landlord	\$475.00

The tenant's application

I find the tenant filed an application to dispute being evicted from the rental property because it is an illegal suite. The Residential Tenancy Policy Guidelines #20 states that Municipal by-laws are not statutes for the purpose of determining whether or not a contract is legal, therefore a rental in breach of a municipal by-law does not make the contract illegal. In other words the tenant and landlord are still bound by the Residential Tenancy Act and must follow the Act with regards to the tenancy. A landlord may not evict a tenant unless she has a Government Order for the tenant to vacate the rental unit. In this instance the landlord has not provided any evidence that she was given an Order from the Government to end the tenancy.

The tenant's application does not disclose what she remedy she is seeking. During the hearing the tenant does not identify what remedy she excepts from her application other than to question the landlords right to evict her because he has rented an illegal suite to the tenant and her son. In any event even if I allowed the tenant to amended her application to dispute either Notice to End Tenancy the undisputed fact remains that she did not pay her rent on the day it was due or within five days of receiving the 10 Day Notice. The tenant provided no evidence to support her claim that the landlord would not accept her offer to pay the outstanding rent for March, 2010 or her claim that the landlord telephoned Social Services and told them she had

vacated the rental unit so her rent was not paid for April, 2010. Therefore, as stated above, the Notices issued by the landlord are upheld and remain in force and effect.

Conclusion

The landlords' application is upheld. An Order of Possession has been issued to the landlord. A copy of the Orders must be served on the tenant and the tenant must vacate the rental unit **two days** after service. The Order of Possession may be enforced in the Supreme Court of British Columbia.

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$475.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

As the tenant does not disclose or identify what remedy she is seeking no Orders will be made in connection with her application and I dismiss her application without leave to reapply.

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: April 28, 2010.

Dispute Resolution Officer