

Decision

Dispute Codes: OPC, OPB, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

1. An Order of Possession pursuant to section 55.
2. A monetary order for unpaid rent pursuant to section 67.
3. To recover the filing fee from the landlord for the cost of this application pursuant to section 72.

Both the landlord and the tenants appeared at the hearing and gave evidence under oath. The parties were given full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she personally served the male tenant with a One Month Notice to End Tenancy for Cause (the notice) on May 2, 2010. Her husband gave evidence that he witnessed this notice being served to the tenant. The landlord gave sworn testimony that she personally served the tenant with the Application for Dispute Resolution hearing package (the hearing package) on May 16, 2010.

The male tenant gave sworn evidence that he and a male friend met with the landlord on May 2, 2010. Although he testified that there was discussion about the landlord's request that he provide her with additional rent or vacate the premises, he denied having been served the notice by the landlord. He testified that he was served with the hearing package on May 16, 2010.

After reviewing the evidence presented, including the documents submitted by both parties, I accept that the tenants were served with the notice and the hearing package.

At the hearing, there was discussion as to whether the most recent submissions of both parties occurred too near the hearing date to afford the parties an opportunity to prepare their responses. These submissions involved documents that did not appear to be in dispute and did not seem central to the issues in contention. I am satisfied that the delays in providing information to one another did not compromise the parties' ability to present their arguments.

There was also discussion as to whether the tenants' names cited by the landlord on the application for dispute resolution (i.e., RF and VF) were indeed the actual names of these tenants. The tenants testified that the names identified above (i.e., RB and MJ) are their correct legal names. The parties accepted that the tenants will be identified in this decision by the names the tenants provided at the hearing. I have included the alternative names identified in the landlord's application for dispute resolution as "a.k.a." to clarify any confusion there may be in who was served with the notice and hearing packages.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

Issue(s) to be Decided

Whether the landlord is entitled to an Order of Possession for cause. Whether the landlord is entitled to a monetary order for damage and recovery of the filing fee for this application.

Background and Evidence

The landlord gave evidence that a fixed term tenancy agreement for the rental premises commenced October 1, 2009 for a period of one year. The landlord entered into evidence a copy of the written tenancy agreement. Rent was established at \$1,100.00 per month payable on the first of each month. By agreement, the rent was raised by \$50.00 when a sublet was approved by Addendum #2 to the tenancy agreement on

October 18, 2009. The landlord testified that the tenants paid a \$550.00 security deposit on September 24, 2009.

In her May 13, 2010 application for dispute resolution, the landlord applied for an Order of Possession to take effect on May 31, 2010. The landlord asks for this Order of Possession for cause, as she maintains that the tenants have breached a number of material clauses in the tenancy agreement. She testified that there are now many men living at these premises and that the tenants have subdivided rooms to accommodate these sub-tenants. She gave sworn evidence that she did not provide written permission to sublet to anyone other than one additional tenant, identified as the male tenant in the October 18, 2009 addendum to the original tenancy agreement. She also maintained that there were pets living in the premises and that the subtenants had caused considerable damage to the rental unit.

The tenants testified that they did not move into these rental premises. They said that they have sublet the premises to four others who are now living there. The tenants maintained that the October 18, 2009 addendum confirmed that the landlord had given her written permission to let them sublease these premises.

Since the landlord recognized that there were a number of sub-leases in effect, the landlord testified that she would be amenable to an Order of Possession effective June 30, 2010.

The landlord asked for a monetary order of \$1,000.00 to compensate her for damage caused by the tenants' subtenants. She provided evidence that she installed a new refrigerator on August 23, 2009 at a cost of \$501.76, which needs to be replaced. She also testified that there has been extensive damage to the rental premises, including broken doors, cracked glass, a broken countertop, damage to floor jambs, windows and curtains. The tenants did not dispute the landlord's claim that there had been damage to the premises, and testified that they intended to replace the refrigerator, had repaired the doors, and had ordered the glass replacement.

Analysis

Order of Possession

The landlord testified that the notice was provided to the male tenant at a fast food outlet in Vancouver on May 2, 2010. The landlord's husband said that he was sitting at another table in the fast food outlet that day. He gave sworn evidence that he witnessed the notice being handed to the male tenant. The male tenant denied that the notice was given to him that day. The male tenant's witness was not available to provide testimony at the hearing.

Based on the sworn testimony and the material submitted, I am satisfied that the preponderance of evidence indicates that the landlord did provide the tenants with a one month notice to end this tenancy on May 2, 2010. In giving more weight to the evidence submitted by the landlord, I note that the male tenant did not enter into testimony evidence from the person who attended the meeting with the landlord on May 2, 2010. The absence of evidence from this witness leads me to rely on the testimony provided by the landlord and her husband.

A one month notice given on May 2, 2010 would not allow the landlord to obtain an end of this tenancy until June 30, 2010. In the notice to end tenancy, the tenants were advised that they have ten days after receiving the notice to file an application for dispute resolution with the Residential Tenancy Branch. The tenants did not do so within ten days of receiving either the May 2, 2010 notice, which they dispute having received. I also note that the tenants did not apply for dispute resolution after they received the landlord's May 16, 2010 application.

Since the tenants did not commence an application for dispute resolution within the required time period for doing so, the tenants' were presumed to have accepted the notice and must vacate the rental premises by the date identified in that notice. However, since the notice was not provided until May 2, 2010, this notice could not take effect until June 30, 2010.

I find that the landlord is entitled to an Order of Possession to take effect on June 30, 2010 by 1 one o'clock in the afternoon. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit by the date required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Monetary Order for Damage to Rental Premises

The tenants did not dispute that there has been damage to the rental premises or the amounts claimed by the landlord. The tenants committed to repair the damage to the premises and replace the refrigerator. I accept that there has been damage to the rental premises caused by the actions of the tenants or through their sub-tenants.

The landlord testified that she is seeking a monetary order as she does not believe that the tenants will implement their commitment to replace and repair the items damaged in the rental premises.

I accept the landlord's claim for a monetary order of \$1,000.00 for the above-noted items outlined in her application for dispute resolution.

The landlord testified that she continues to hold a security deposit of \$550.00 plus interest from September 24, 2009 to the date of this decision for this tenancy. Although she did not apply to retain a portion of the security deposit to offset the monetary order she is seeking, I allow the landlord to retain the security deposit plus interest in partial satisfaction of the monetary award. No interest is payable over this period.

Filing Fee

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I grant the landlord an Order of Possession to take effect on June 30, 2010.

I make a monetary order in favour of the landlord as follows:

Monetary Award	\$1,000.00
Recovery of Filing Fee for this application	50.00
Less Security Deposit and Interest	-550.00
Total Monetary Award	\$500.00

Should the tenants fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.