

DECISION

Dispute Codes OPB, MNDC, FF

Introduction

This matter dealt with an application by the landlords for an Order of Possession, a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act* (Act), regulations or tenancy agreement and to recover the filing fee for this proceeding.

Service of the hearing documents was done in accordance with section 89 of the Act. They were hand delivered to the tenant on May 04, 2010. The tenant confirmed she had received them. At the outset of the hearing the landlord stated that the male tenant had moved from the rental unit and as a result they wish to proceed with the female tenant only.

The previous landlords, the new owner and his agent and the female tenant all appeared, gave their testimony, were provided the opportunity to present evidence, make submissions and to cross-examine the other party. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are the landlords entitled to an Order of possession?
- Are the landlords entitled to a Monetary Order for money owed or compensation for loss or damage under the Act?

Background and Evidence

This month to month tenancy started on August 01, 2007. Rent for this unit is now \$1,100.00 per month and is due on the first of each month. The tenant paid a security deposit of \$625.00 on August 01, 2007.

The previous landlords testify that they had sold the house and served the tenant with a Two Month Notice to End Tenancy as all the conditions of sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give notice because the purchaser or a

close family member intends in good faith to occupy the rental unit. This notice was served to the tenant on February 13, 2010 with an effective date of April, 30, 2010. The tenant did not dispute this Notice.

The previous landlords testify that the tenant was given her last month's rent for April, 2010 free in compensation for the Two Month Notice. However the tenant did not move out of the rental unit at the end of April and continues to reside in the unit. The new owner testifies that he and his family have been prevented from moving into the unit and have had to reside elsewhere until the tenant moves out. The previous landlords and the new owner seek an Order of Possession as the tenant failed to vacate the rental unit at the end of April, 2010.

The landlords application claims compensation of \$2,200.00 as the tenant had overstayed in the rental unit and also for unpaid rent for May and June, 2010. However, during the hearing the landlords have reduced their claim and seek \$1,100.00 in unpaid rent for May, 01 May 15, 2010 and for June 15, to June 30, 2010. The landlord's claim the tenant did pay rent for the second half of May, 2010 rent and the first half of June, 2010. The landlords claim that they did not give the tenant written permission to use her security deposit for unpaid rent for May, 2010. The new owner's agent testifies that the new owner and his family wishes to live in the rental unit and did not reinstate the tenancy by accepting rent for the months the tenant overhired. The agent states it was explained to the tenant that the new owners needed to move into the rental unit.

The previous landlords have stated that if they are successful with the application that any Orders are made out in the new owners name only for enforcement.

The tenant testifies that she did intend to move from the rental unit around March 15, 2010 however the other tenant let her down and moved out without her. She states she was then unable to afford the rent on the new accommodation and had to stay in this rental unit. The tenant states she has now found new accommodation and is waiting for social services to help her move. She states she intends to move out on or before July 01, 2010.

The tenant testifies that she applied \$550.00 of her security deposit to the unpaid rent for the first half of Mays rent but agrees that she did not have the landlord's permission to do this. The tenant does not dispute that she owes rent for the second half of June, 2010 and states this was not paid as she hoped to have moved out before June 15, 2010.

The tenant presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of all Parties attending the hearing. Section 49(6) (a) and (b) of the *Act* states:

If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

I find the tenant did not dispute the Two Month Notice to End Tenancy for landlords use of the property and as such is conclusively presumed to have accepted that the tenancy end on April 30, 2010. I find the tenant did not move from the rental unit at this time and accepted a rent free month in April, 2010 in compensation for this Notice. Consequently, I find the tenant has overheld at the rental unit and the landlord is therefore entitled to an Order of Possession.

The landlords argue that the tenant has not paid rent for the first half of May and the second half of June. The landlords argue that they did not give permission to the tenant to apply part of her security deposit towards the rent for May, 2010. Section 21 of the *Act* states:

Tenant prohibition respecting deposits

21 Unless the landlord gives written consent, a tenant must not apply a security deposit or a pet damage deposit as rent.

Consequently I find the tenant has not paid rent for May 01 to May 15, 2010 to the amount of \$550.00 and has not paid rent for June 15 to June 30, 2010 to the amount of \$550.00.

Therefore the landlord is entitled to a Monetary Order to the sum of **\$1,100.00** pursuant to section 67 of the *Act*. The security deposit will continue to be held in trust until the end of the tenancy and must then be dealt with in accordance to the *Act*.

I further find as the landlord has been successful with his claim he 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 May and June, 2010	\$1,100.00
Total amount due to the landlord	\$1,150.00

Conclusion

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 **\$1,150.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service** on the tenant. This order must be served on the Respondent and may be filed in the Supreme 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: June 21, 2010.

Dispute Resolution Officer