

DECISION

Dispute Codes OPC, MNR, MNSD, O, MT

Introduction

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

The landlord, who speaks very little English was represented by his daughter and son-in-law who each gave affirmed evidence and the landlord was present.

Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents personally on May 8, 2010, the tenant did not attend the hearing. An occupant of the dispute address called into the conference call hearing after the hearing had begun. This person gave affirmed evidence, was subject to cross examination by the landlord's agents, and was given the opportunity to cross examine the landlord's agents on their evidence.

At the outset of the hearing, the landlord's agents applied to amend the application to include an application for a monetary order for unpaid rent, and for an order extending the time within which the application is served upon the tenant. Both applications are hereby granted.

Issues(s) to be Decided

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

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

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

Background and Evidence

This tenancy began on June 1, 2006 as a fixed term tenancy and then reverted to a month-to-month tenancy. The landlord's agents testified that the tenant is still residing in the unit, along with some occupants. At the outset of the tenancy, the landlord collected a security deposit in the amount of \$300.00. Rent is payable on the 1st day of each month in the amount of \$650.00, and the landlord's agents have testified that the tenant is in arrears for rent in the amount of \$162.50 for the month of May, 2010 as well as the full \$650.00 for June, 2010.

On March 17, 2010 the landlord personally served the tenant with a 1 Month Notice to End Tenancy for cause which states several reasons for ending the tenancy:

- That the tenant is repeatedly late paying rent;
- That the tenant has allowed an unreasonable number of occupants in the unit/site;
- That the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- The tenant has assigned or sublet the rental unit/site without landlord's written consent.

The landlord's agents testified that on March 10, 2010 a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was served on the tenant for \$325.00 owing for rent for that month. Further, a similar notice was posted in March, 2009, and in November and December, 2009 the tenant was given verbal notice with respect to late payments for those months. The rented unit is a basement suite and the landlord resides in the upper unit of the building. The landlord has collected some rent since then, but receipts which were provided in advance of the hearing clearly show "For Use and Occupancy Only."

They also testified that the tenant has had up to 8 other people staying there, and that they witnessed them staying in the unit in April and some of them in May, 2010. Since December, 2009 they have seen unauthorized occupants, and on April 10, 2010 the landlord posted a notice to the door of the residence, a photograph of which was provided as evidence in advance of the hearing. That notice requests that the tenant make sure that all unauthorized occupants to leave by April 13, however, none left.

There have been comings and goings of people, often well into the evening. During December, 2009 and January, 2010 a roommate had moved in and the tenant had told the landlord that the roommate was a drug addict. This person had knocked on the landlord's door after 11:00 p.m. one evening and when the landlord answered the door, the person asked him for money. The landlord was upset at this, did not give any money to the tenant, and was afraid. He didn't know what to do, but spoke with the tenant about it in the morning, and she admitted that he was not a good person.

The landlords testified about noisy arguments in the suite after 10:00 p.m. and witnessed a hole in a wall caused by a fight in the unit. That damage was witnessed on May 22, 2010. Noise problems exist about 4 times per week. On June 14, 2010 at about 1:00 in the afternoon the landlord's agent heard a loud argument between a man and a woman in the suite and heard the man yell something to the effect of, "You've messed up my life; I'm hiding from cops because of you," and using foul language. They were very loud, the agents heard banging and things being thrown around the unit.

The landlord's agents have called the police, who told them to start writing down licence plates. They used to visit the landlord once per week but now they've been going 2 or 3 times per week to assist him because he is afraid. Further, the tenant agreed to not smoke inside the residence, but she or her guests have been smoking.

The agent for the tenant, or occupant, testified that she moved into the unit in April, 2010, and that the tenant moved out a month ago. The landlord's agents stated that they still see her coming and going.

Analysis

Firstly, I find that the tenant has been late paying rent on enough occasions to cause the landlord to issue the notice to end tenancy.

Secondly, I refer to Section 34 of the Residential Tenancy Act:

34 (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.”

Whether the tenant actually still resides there is unclear, however, it is clear that if she does not, the landlord did not consent in writing to allowing another person to sublet the unit. That person, therefore is an occupant, not a tenant.

Dealing with the disturbances described by the landlord, I find that the landlord has cause to evict the tenant for the reasons described in the 1 Month Notice to End Tenancy for Cause that was served on the tenant on March 17, 2010. The tenant did not dispute the notice within the time required under the *Act*, and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

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 \$812.50 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the deposit and interest of \$309.99 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$552.51. 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: June 17, 2010.

Dispute Resolution Officer