



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPC, OPB, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for an Order of Possession for Cause, an Order of Possession for breach of the tenancy agreement, for an order that the landlord retain all or part of the pet damage deposit or security deposit and to recover the filing fee from the tenant for the cost of this application.

An agent for the landlord attended the conference call hearing however, despite being served with the Landlord's Application for dispute Resolution and notice of hearing documents on September 4, 2010, the tenant did not attend the hearing.

All evidence and information provided by the landlord has been reviewed and is considered in this Decision. No evidence was provided by the tenant at the hearing nor in advance of the 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 breach of an agreement?

Is the landlord entitled to retain the security deposit?

Background and Evidence

This tenancy originally began as a fixed term tenancy for a period of one month. The landlord provided a written agreement signed by the tenant dated April 29, 2010 which

provided for a one month rental for the month of May, 2010. The parties then entered into another agreement whereby the tenant agreed to vacate the rental unit on June 30, 2010. A third tenancy agreement was entered into by the parties on July 2, 2010 which provided for a fixed term of the tenancy, ending on September 30, 2010. A copy of that agreement was provided in advance of the hearing, and it contains initials of the parties beside the paragraph that states "the tenancy ends and the tenant must move out of the residential unit. If you choose this option, both the landlord and tenant must initial in the boxes to the right." No checkmark appears in the box on the copy before me, but the landlord testified that it appears on the original.

In that agreement, rent was payable in the amount of \$950.00 per month and specified that only the tenant and her 3 children would occupy the premises. The landlord also collected a security deposit from the tenant in the amount of \$475.00; \$400.00 of which was paid on April 29, 2010, and the balance on July 2, 2010.

The landlord testified that the rental unit is one of 12 units in an apartment building. She stated that she has received numerous complaints from other tenants in the building about noise, screaming, kicking doors and heavy traffic going in and out of the rental unit. Further, the common door to the building has been blocked in such a way that it won't lock; the landlord has had it fixed on at least 2 occasions and stated that it was blocked by the guests of this tenant. She further testified that she watched the unit and for 30 minutes at least 10 people entered the apartment unit and all vacated within minutes.

On July 26, 2010 the landlord issued a 1 Month Notice to End Tenancy for Cause to the tenant which shows an expected date of vacancy of August 31, 2010, however, the tenant still resides in the rental unit. The landlord testified that the notice was served on July 26, 2010 by posting it to the door of the rental unit.

On October 2, 2010 police attended the building with guns drawn and searched the rental unit. The tenant was arrested, and the landlord was subsequently asked to attend the police station to provide a statement.

The landlord also testified that 2 other tenants moved from the apartment building and told the landlord they moved because they are afraid of the company kept by the tenant. The landlord has also witnessed people fighting outside the residence and then attending to this tenant's unit. She further stated that she witnessed the tenant's guests putting out cigarettes in the carpet of the common area of the building.

The landlord testified that she served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 4, 2010 for non-payment of rent for the month of September; the tenant having only paid \$600.00 for that month. Service of the notice was effected by serving an adult at the residence. A copy of the notice was provided in advance of the hearing and states that the effective date of vacancy is September 14, 2010. The tenant has paid the rent for the month of October, 2010, but \$350.00 still remains outstanding for the month of September. The landlord has not yet cashed the October rent cheque, awaiting the outcome of this hearing.

Analysis

I find that the landlord did have cause to issue the first notice to end tenancy. She testified that she has lost tenants as a result of the actions of this tenant and her company. The *Residential Tenancy Act* states that the tenant may dispute the notice within 10 days after the date the tenant receives the notice, and if the tenant does not make an application for dispute resolution, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

The landlord collected rent from the tenant beyond the effective date of the first notice issued, thereby reinstating the tenancy. However, the landlord issued a second notice to end tenancy for unpaid rent. The *Act* further states that within 5 days after receiving that notice the tenant may pay the overdue rent or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

I find that the tenant did not make an application for dispute resolution to dispute the notice, did not pay the outstanding rent within the 5 days permitted under the *Act*, and is therefore presumed to have accepted that the tenancy ended on September 14, 2010.

The landlord's claim to retain the security deposit is not supported by a claim for damages or for unpaid rent. I also find that amending the application to include an application for a monetary order would prejudice the tenant, and I therefore decline to make any orders with respect to the security deposit. The landlord must comply with the *Residential Tenancy Act* as it pertains to a monetary claim and the security deposit.

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.

The landlord's application to retain the security deposit is hereby dismissed, with leave to reapply.

I further order that the landlord recover from the tenant \$50.00 for the cost of this application.

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: October 14, 2010.

Dispute Resolution Officer