



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent; damage or loss under the Act, regulations or tenancy agreement; authorization to retain the security deposit and recovery of the filing fee. The landlord and one of the co-tenants appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

The landlord identified two co-tenants in making this application and I heard that the landlord served each tenant via registered mail sent to the rental unit. The tenant appearing at the hearing (JC) testified the other tenant (DR) had moved-out approximately four months ago. The landlord acknowledged the registered mail sent to DR was returned as unclaimed.

When a landlord serves a tenant by registered mail the Act requires that the mail be sent to an address at which the tenant resides or the forwarding address provided by the tenant. I find DR was not served at an address at which he resides and I amend the application to exclude DR.

Issues(s) to be Decided

1. Has the landlord established an entitlement to an Order of Possession?
2. Has the landlord established an entitlement to a Monetary Order for unpaid rent, loss of rent and late fee?

3. Is the landlord entitled to retention of the security deposit?

Background and Evidence

I was provided undisputed evidence as follows. The tenancy commenced January 15, 2010 and a \$405.00 security deposit was paid. The tenants are required to pay rent of \$810.00 on the 1st day of every month. The landlord received \$405.00 towards rent for October 2010 from the Ministry. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on October 2, 2010 and posted it on the door that same day. The Notice indicates rent of \$425.00 was outstanding as of October 1, 2010. The landlord received \$405.00 from the Ministry on October 28, 2010 and the tenant paid \$400.00 on October 29, 2010. The landlord issued a receipt to the tenant for use and occupancy only.

The landlord calculates that as of today's date the tenant owes \$410.00 in rent including the month of November, plus \$40.00 in late fees. The tenant did not dispute the amount owed to the landlord.

The tenant submitted that he has tried to obtain roommates but the landlord has not approved of any of the people he has found to move in. For instance the tenant had a prospective male roommate but the landlord would not give the tenant application forms to give to the roommate who was in the hospital. The tenant then met with the landlord with a prospective female roommate on November 1, 2010 who had \$405.00 in cash to pay the landlord. The landlord stated she did not want a "streetwalker" living in the unit and gave the cash back to the female.

The landlord stated that it is policy that long term occupants are not permitted and to require all occupants to be approved in writing by the landlord and be tenants under a tenancy agreement. The potential male occupant had not come to meet the landlord to sign an application for tenancy. The potential female occupant was not given an application as the landlord would not approve her application.

Analysis

This tenancy involves co-tenants, DR and JC. Co-tenants are jointly and severally liable for the debts or damages relating to the tenancy meaning the landlord can recover amounts from both or either tenant. Where one tenant is held responsible for debts owed to a landlord it is up to the co-tenants to apportion the debt among themselves. Where co-tenants are in a fixed term tenancy and one of the co-tenant moves out that co-tenant remains responsible for paying rent until the end of the term.

It is undisputed that the tenants, DR and JC, failed to pay the full rent owed for the month of October 2010 under the terms of the tenancy agreement. I accept that the tenants were served with a valid Notice to End Tenancy for Unpaid Rent by posting it on the door of the rental unit, except the effective date should read October 15, 2010. The effective date is automatically changed to read October 15, 2010 in accordance with section 53 of the Act.

Upon receiving the Notice, the tenants had until October 10, 2010 to pay the outstanding rent to nullify the Notice or dispute the Notice. The tenants did neither of these two options. I accept that landlord subsequently received rent from the tenant and issued a receipt for use and occupancy only which means the landlord did not reinstate the tenancy.

Upon hearing from the parties, it is clear the tenant requires a roommate to afford the rent. The issue raised by the tenant is that the landlord had interfered with the tenant's ability to have a roommate which severely restricts the tenant's ability to pay rent.

As the landlord was informed during the hearing, a policy of the landlord is not necessarily enforceable unless the tenancy agreement or the Act provides for such a term. Upon review of the tenancy agreement I note that clause 9. 3) of the tenancy agreement states:

- a) When a person, not listed under “Tenants” above, resides in the premises for a period in excess of two weeks in any calendar year, he/she shall be deemed to be occupying the premises contrary to this agreement and without the right or permission of the landlord. This person shall be considered a trespasser. Where the tenant anticipates an additional person in the rented premises, he/she shall promptly apply IN WRITING for permission from the landlord for such a person to become a permanent occupant. Failure to apply and obtain the necessary approval of the landlord IN WRITING is considered a fundamental breach of this agreement.

In this case I was not provided evidence that the tenant had applied, in writing, for permission to have a permanent occupant reside with him in the rental unit. Thus, the tenant has not established that he complied with the terms of the tenancy agreement by requesting permission for an occupant. Accordingly, I do not find sufficient evidence that the landlord interfered with the tenant's ability to pay rent within five days of receiving the 10 Day Notice.

Even though the tenant attempted to obtain a roommate and pay the outstanding rent on November 1, 2010 this was well after the 10 Day Notice took effect and would not have preserved this tenancy without agreement of the landlord.

In light of the above, I find that the tenancy has ended October 15, 2010 due to failure to pay rent and I grant the landlord's request for an Order of Possession. As the amount of loss of rent for November is less than the security deposit I provide the landlord an Order of Possession to be effective November 30, 2010. The tenant must vacate the rental unit by November 30, 2010 and if the tenant fails to do so the landlord may enforce the Order of Possession in The Supreme Court of British Columbia.

Upon review of the tenancy agreement I accept that the tenant is obligated to pay late fees of \$20.00. As the tenancy ended October 15, 2010 I grant the landlord's request for a late fee for October 2010; however, I deny such a charge for November 2010 as the tenancy ended before November 2010. Rather, I award the landlord loss of rent for the month of November in the amount of \$410.00.

I authorize the landlord to retain the tenant's security deposit and find the landlord has established entitlement to a net Monetary Order as follows:

Loss of rent – November 2010	\$ 410.00
Late fee – October 2010	20.00
Filing fee	50.00
Less security deposit	(<u>405.00</u>)
Monetary Order	\$ 75.00

The Monetary Order must be served upon the tenant and may be enforced in Provincial Court (Small Claims).

Conclusion

The tenancy has ended and the landlord has been provided an Order of Possession effective November 30, 2010. The landlord has been authorized to retain the security deposit and is provided a Monetary Order in the net amount of \$75.00 to serve upon the tenant.

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: November 17, 2010.

Dispute Resolution Officer