



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNDC, MNSD, FF, OPB, OPC

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for damages to the unit, site or property, for compensation for loss or damage under the Act or tenancy agreement, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on December 3, 2010. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there damages to the unit and if so, how much?
3. Is the Landlord entitled to compensation for the damages or loss and if so how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on April 1, 2010 as a month to month tenancy. Market rent is \$705.00 per month and the subsidized rent paid by the Tenant is \$478.00 payable in advance of the 1st day of each month. The Landlord said a security deposit of \$352.50 was paid on March 16, 2010

The Landlord said the Tenant's partner has moved into the unit without permission of the Landlord. The Landlord said the Tenant's partner was just released from jail and has criminal connection which resulted in a gun shooting incident at the rental unit on November 11, 2010. The Landlord said she is requesting an Order of Possession as she said the shooting incident put the other tenants in the building a high risk for their safety and the shooting caused considerable damage to the unit. The Landlord continued to say this incident is a breach of a material term of the tenancy agreement

found in the addendum for crime free housing section c (street gang activity), section d (assault or threatened assault), section e (unlawful use of a firearm) and section f (any criminal activity)

The Landlord continued to say the shooting incident resulted in the Landlord hiring a company to clean the blood up and repair the door and the walls. The Landlord submitted a bill for \$2,438.56 to repair the damage and clean the carpets and the floor.

The Landlord said if she is successful with her application she would like the order of possession to be as soon as possible as she and the other tenants in the building are scared that they may be at risk and they fear for their safety.

Analysis

Section 47(4) of the Act states that **within 10 days of receiving** a Notice to End Tenancy for Cause a tenant can make application to dispute the Notice or correct the cause of the Notice. If the Tenant fails to do either of these things, then under section 47(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy three days after it was posted on the Tenant's door, or on November 19, 2010. Consequently, the Tenant would have had to have applied to dispute the Notice no later than November 29, 2010.

I find that the Tenant has not applied for dispute resolution. Consequently, I find pursuant to s. 55(b) of the Act that the Landlord is entitled to an Order of Possession to take effect on the effective date of the Notice to end Tenancy or December 31, 2010 after service of it on the Tenant.

I also find that the Landlord is entitled to recover costs incurred to repair and clean up the damages from the shooting incident on November 11, 2010, in the amount of \$2,438.56.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit as partial payment of the damages. The Landlord will receive a monetary order for the balance owing as following:



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	Damages	\$2,438.56	
	Recover filing fee	\$ 50.00	
	Sub Total:		\$2,488.56
Less	Security Deposit	\$352.50	
	Sub Total		\$ 352.50
	Balance Owing		\$2,136.06

Conclusion

An Order of Possession effective December 31, 2010 and a Monetary Order in the amount of \$2,136.06 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.
