



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, OPL, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and landlord's use of property and a Monetary Order for unpaid rent, damage or loss under the Act, regulations or tenancy agreement and authority to retain the security deposit.

The tenants testified that the landlord served their 18 year old son with the hearing documents. The landlord testified the male tenant was served with the hearing documents. As the tenants were in attendance and confirmed receipt of the landlord's application and notice of this hearing I ordered the tenant's sufficiently served and I proceeded to hear from the parties. Both parties were provided the opportunity to be heard and to respond to the submissions of the other party

Issues(s) to be Decided

1. Are the landlords entitled to an Order of Possession?
2. Are the landlords entitled to monetary compensation against the tenants?
3. Are the landlords authorized to retain the security deposit?

Background and Evidence

The parties provided undisputed testimony as follows. The tenancy commenced in 2009 and the tenants paid a \$465.00 security deposit. The tenants are required to pay

rent of \$925.00 on the 1st day of every month. There is no written tenancy agreement. The tenants ordinarily pay rent in cash and the landlord does not issue receipts.

The landlord testified that the male tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use of Property on September 1, 2010. The 2 Month Notice has an effective date of November 1, 2010.

The landlord testified that the male tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent on October 20, 2010. The 10 Day Notice indicates the tenants failed to pay rent of \$925.00 on October 1, 2010 and has an effective date of November 1, 2010. The landlords stated the tenants have failed to pay rent for October, November or December 2010.

The tenants denied service of the Notices to End Tenancy as stated by the landlord. The tenants stated they were served with both Notices on November 16, 2010 and filed a Tenant's Application for Dispute Resolution. A hearing was held December 8, 2010; however, the tenants' application was dismissed as neither the landlord nor the tenants appeared at that hearing. The tenants claimed they were in the hospital on December 8, 2010 and the landlord claimed they were not served with notice of a hearing by the tenants. The tenants did not make a request for review of the December 8, 2010 proceeding and prove they were unable to attend for medical reasons.

The tenants testified that the male tenant paid the landlord or the landlord's family member cash in October 2010 and on November 8, 2010. The tenant further stated that she had received additional funding from the Ministry for rent based upon the 10 Day notice she received November 16, 2010. The tenant claimed she had sent in proof of income assistance to the Residential Tenancy Branch as evidence for the December 8, 2010 hearing but acknowledged the landlords were not served with the evidence. Upon a search of the Residential Tenancy Branch records I did not locate evidence from the tenant for the December 8, 2010 hearing or this hearing.

The tenants stated they are planning on moving tomorrow but also stated they may stay until the end of December 2010. The landlord was agreeable to an Order of Possession effective December 31, 2010.

As evidence the landlords provided copies of the Notices to End Tenancy; however, the tenants denied receiving those documents as evidence. The tenants did agree that they were given the Notices on November 16, 2010.

Analysis

A party that makes an application against another party has the burden to establish their case. The burden is based upon the balance of probabilities.

The landlord has the burden to prove that Notices to End Tenancy were served upon the tenants. In this case, the landlord claims to have issued a 10 Day Notice on October 20, 2010. The tenants denied service of this Notice on October 20, 2010; however, I prefer the landlord's testimony over that of the tenants, based upon a balance of probabilities. Firstly, the tenant stated that she had submitted evidence to the Residential Tenancy Branch in an effort to prove rent was paid; however, this evidence was not located. Secondly, the tenant stated that she received additional funding from the Ministry on November 8, 2010 because she was behind in rent. I find it unlikely the Ministry would have granted additional funding without documentation. Given the timing of the additional Ministry funding and the issue date of the 10 Day Notice, I find it more likely than not that the tenant had the 10 Day Notice in her position when she requested additional Ministry funding. Therefore, I find the tenants were served with the 10 Day Notice on October 20, 2010 as stated by the landlord.

Where a 10 Day Notice to End Tenancy is issued, the tenant has the burden to either dispute the Notice or pay the outstanding rent within five days of receiving the Notice. Given my findings above, since the tenant made an Application for Dispute Resolution on November 17, 2010 I find the tenant disputed the Notice more than five days after

receiving it. Given my findings above, I also find the tenants lack credibility and I prefer the landlord's version of events over that of the tenants. Therefore, I accept that the tenants failed to pay rent for October 2010.

Where a tenant receives a 2 Month Notice to End Tenancy for Landlord's Use of Property, the tenant is entitled to receive a full two months of notice and a free month of rent as compensation under section 51 of the Act. Since the Notice was issued September 1, 2010 the effective date should read November 30, 2010 and the tenants were entitled to withhold rent otherwise payable for November 2010. Therefore, I do not award the landlords unpaid rent for November 2010.

As the tenants indicated they are likely to remain in the unit until the end of December 2010 and the landlords were agreeable to an Order of Possession effective December 31, 2010 I provide the landlords with an Order of Possession effective December 31, 2010. I also find that the tenants owe the landlords for use and occupancy of the rental unit for the month of December 2010. I award the landlords monetary compensation of \$925.00 for the month of December 2010.

I award the landlords the filing fee paid for this application as the landlords were largely successful in their application. Since the landlords were awarded unpaid rent, I authorize the landlords to retain the tenants' security deposit in partial satisfaction of the rent owed.

I provide the landlords a Monetary Order calculated as follows:

Unpaid rent – October 2010	\$ 925.00
Tenants' section 51 compensation – November 2010	nil
Use and occupation – December 2010	925.00
Filing fee	50.00
Less: retention of security deposit	<u>(465.00)</u>
Monetary Order for landlords	\$ 1,435.00

The landlords must serve the tenants with the enclosed Order of Possession and Monetary Order. The Order of Possession may be enforced in The Supreme Court of British Columbia and the Monetary Order may be enforced in Provincial Court (Small Claims).

Conclusion

The tenancy has ended and the landlords are provided an Order of Possession effective December 31, 2010. The landlords are authorized to retain the tenants' security deposit and have been provided a Monetary Order for the balance of \$1,435.00. By way of this decision the tenants have received one month of compensation under section 51(1) of the Act.

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: December 14, 2010.

Dispute Resolution Officer