

INTERIM DECISION

Dispute Codes: **Landlord:** OPR, OPC, MND, MNDC, MNSD and FF
 Tenant: CNR, CNC, RP, ERP, OLC, PSF, MNDC and FF

Introduction

These applications were brought by both the landlords and the tenant.

By application received January 11, 2011, 2010, the landlords seek an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on January 3, 2011 and a Notice to End Tenancy for cause served on December 31, 2011. The landlords also sought a Monetary Order for unpaid rent, loss of rent, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off.

By application of January 4, 2011, the tenant seeks to have both notices set aside, orders for repairs, emergency repairs, provision of services or facilities, landlord compliance with the legislation or rental agreement, and monetary compensation for loss or damage under the legislation or rental agreement.

Issues to be Decided

These applications require decisions on whether the Notices to End Tenancy should be set aside or upheld with an Order of Possession, the monetary entitlements of both parties, and the whether the various orders sought by the tenant are warranted.

Background, Evidence and Analysis

This tenancy began on January 1, 2008. Rent is \$1,900 per month and the landlords hold a security deposit of \$950 paid on December 23, 2007.

As a matter of note, the parties signed a 12-month renewal agreement on January 12, 2009 for a fixed term to end on December 31, 2010 and both parties initialled the option that indicated that the tenancy ended and the tenant must move out at that time.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served on January 3, 2011 after she had attended at the bank to cash the tenant's rent cheque for January and was advised that there were non-sufficient funds to cover it. After serving the Notice to End Tenancy for unpaid rent, the landlord attempted again to cash the cheque the following day and was again advised by the bank that the account remained insufficient to honour the cheque.

The tenant and advocate stated that funds were available but they provided no proof that the rent had been paid by the time of the hearing.

Section 26 of the *Act* provides that tenants must pay rent when it is due. Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenant has made application to dispute the notice but that she did not pay the rent within five days of receiving the notice.

Therefore, I find that the landlords are entitled to an Order of Possession effective two days from service of it on the tenant.

I further find that the landlords are entitled to a Monetary Order for the unpaid rent and authorization to retain the security deposit in set off against the rent.

Having so decided, I find that the Notice to End Tenancy for cause is moot and need not be addressed in the present decision. Similarly, I find this decision supersedes a one month notice given by the tenant in December and the December 31st conclusion of the tenancy created by the rental agreement which appears to have been amended by the landlords' attempted acceptance of January rent.

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In addition, as the tenancy has not yet ended, I find the landlords' claims for damages and anticipated loss of rent to be premature.

As the conclusion of the tenancy is imminent, I find that the tenant's claims for Orders for repairs, emergency repairs, provision of services or facilities and landlord compliance are rendered moot.

The balance of the tenant's application pertains to compensation arising from concerns from mold in the rental building.

As the time allotted for the hearing had elapsed, and as the more pressing matter of whether the tenancy should end was determined on the matter of unpaid rent, I have adjourned the hearing.

At present, in addition to the Order of Possession, I find that the landlord is entitled to a Monetary Order calculated as follows:

Award to landlord	
Rent for January 2011	\$1,900.00
Filing fee	100.00
Sub total	\$2,000.00
Less retained security deposit	- 950.00
Less interest (December 23, 2007 to date)	- 14.61
TOTAL	\$1,035.39

Conclusion

The landlords' copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia effective two days from service of it on the tenant.

In addition to authorization to retain the security deposit in set off, the landlords' copy of this decision is also accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia in the amount of \$1,035.39 for service on the tenant.

The remaining matters will be addressed when the hearing reconvenes at a date and time set out in the enclosed Notice of Hearing.

January 20, 2011