



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

OPC, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Cause, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for Cause?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on February 4, 2009; rent is \$650.00 per month, due on the first day of each month. A deposit in the sum of \$325.00 was paid in February, 2009.

The landlord stated that on October 14, 2010, a 1 Month Notice Ending Tenancy for Cause, which had an effective date of November 15, 2010, was personally served to the tenant. The tenant confirmed receipt of the Notice on that date. The tenant did not dispute the Notice which indicated the tenant has been repeatedly late paying her rent

and breached a material term of her tenancy that was not corrected within a reasonable time after she was given written notice.

The copy of the Notice submitted as evidence by the landlord, was not signed. The landlord stated that the copy served to the tenant had been signed and that he had submitted his unsigned office copy as evidence. The tenant could not recall if her copy had been signed or not and she did not have a copy of the original Notice with her.

I provided the tenant until 12 noon on January 17, 2011, to supply a copy of her Notice via facsimile. During the hearing I told the parties that I was confident, on the balance of probabilities, based upon the landlord's affirmed testimony and the absence of any objection of the tenant, that the tenant had been served a signed Notice.

Until November, 2010, the landlord was receiving \$530.00 per month from a government agency, toward rent owed. The tenant confirmed that she has not paid \$120.00, the balance of rent owed each month from February to June, 2010, August to October, 2010, December, 2010 and January, 2011; totaling \$1,200.00 in unpaid rent. The tenant has paid December, 2010 rent and January, 2011, rent only in the sum of a \$325.00 government agency payment. The tenant took in a roommate which resulted in a decrease of monthly payments made by the government from \$530.00 to \$325.00.

Mutually Settled Agreement

During the hearing the parties agreed to the following:

- The landlord will be provided with an Order of possession effective February 2, 2011;
- The tenant is to pay \$650.00 rent, due on the first day of each month;
- The tenant is to pay an additional \$200.00 per month on the first day of each month, until such time as the rent arrears totalling \$1,850.00, is paid in full; and
- That after the first day of any month the landlord will be at liberty to serve the tenant the Order of possession if payment, in full, in the sum of \$850.00 is not made on the 1st day of the month until such time as the rent arrears are fully paid.

Analysis

The tenant was served with the Notice ending tenancy for cause on October 14, 2010. Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was November 30, 2010.

On January 17, 2011 the tenant did submit a copy of her Notice; which indicated that the landlord had signed the Notice as required by the Act, therefore, the Notice is effective.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on November 30, 2010, pursuant to section 47 of the Act.

Section 47 of the Act stipulates that a tenant has 10 (ten) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights; therefore; pursuant to section 47(5) of the Act, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession, based on the terms of the mutually settled agreement.

The parties have come to a mutual agreement on service of this Order, should the tenant fail to meet the agreed upon payment schedule in any month, the landlord is at liberty to serve the Notice on any day after the 1st day of the month, when full payment of rent and arrears has not been made.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$1,850.00 for February to June, 2010; August to October, 2010; December 2010 and January 2011 and that the landlord is entitled to compensation in that amount.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$325.00, in partial satisfaction of the monetary claim if the tenancy should end as a result of the Order of possession I have issued. Any balance of the deposit remaining once all rent has been paid must be disbursed as provided by the Act.

However, as the landlord has agreed to provide the tenant an opportunity to maintain the tenancy through additional monthly payments of rent arrears owed, the landlord may continue to retain the deposit which must be disbursed at the end of the tenancy as provided by the Act.

The landlord is at liberty to utilize section 21 of the Act, which allows a tenant to apply a deposit toward unpaid rent with the landlord's written consent only.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

If the tenancy ends the landlord may retain any amount of the deposit that is owed for unpaid rent between February 2010 and January, 2011. Evidence of retention of the deposit and any additional monthly payments made by the tenant must be provided to BC Small Claims Court so that a calculation of the balance owed by the tenant may be made.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after the Order has been served, based on the mutually settled agreement. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The parties have reached a mutually settled agreement that the landlord will serve the Order of possession only if the tenant fails to make the rent payment plus an additional \$200.00 payment every 1st day of the month, until such time as the rent arrears in the sum of \$1,850.00 has been paid.

I find that the landlord has established a monetary claim, in the amount of \$1,900.00, which is comprised of unpaid rent from February 2010, to January 2011, and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution. The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$325.00, in partial satisfaction of the monetary claim as detailed in my analysis.

Based on these determinations I grant the landlord a monetary Order in the sum of \$1,900.000. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated: January 17, 2011.

Residential Tenancy Branch