



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

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

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for an Order of Possession for unpaid rent or utilities; for an Order of Possession for cause; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to retain the security deposit in full or partial satisfaction of the claim; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The landlord attended the conference call hearing, provided affirmed testimony and provided an evidence package in advance of the hearing. Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on January 31, 2011, the tenant did not attend.

All information and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to an order permitting the landlord to retain the security deposit in full or partial satisfaction of the claim?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this fixed term tenancy began on June 15, 2010, expired on September 30, 2010 and then reverted to a month-to-month tenancy. The tenant still

resides in the rental unit. Rent in the amount of \$1,600.00 is payable in advance on the 1st day of each month. At the outset of the tenancy, the landlord collected \$800.00 from the tenants for a security deposit, and the landlord testified that the tenancy agreement also provided for a pet damage deposit in the amount of \$800.00 but the tenant did not pay the pet damage deposit.

The landlord further testified that the tenant has been repeatedly late paying the rent. He testified that the payments he has received are as follows:

Date	Description	Amount Due	Amount Rec'd	Balance Due
June 30/10	Pet Damage Deposit	\$800.00	0	\$800.00
June 15/10	Rent Due	\$800.00	\$800.00	0
July 1/10	Rent Due	\$1,600.00	0	\$1,600.00
July 10/10	Rent Paid		\$800.00	\$800.00
July 20/10	Rent Paid		\$800.00	0
August 1/10	Rent Due	\$1,600.00	0	\$1,600.00
August 9/10	Rent Paid		\$800.00	\$800.00
August 17/10	Rent Paid		\$800.00	0
Sept 1/10	Rent Due	\$1,600.00	0	\$1,600.00
Sept 2/10	Rent Paid		\$800.00	\$800.00
Sept 22/10	Rent Paid		\$800.00	0
Oct 1/10	Rent Due	\$1,600.00	0	\$1,600.00
Oct 5/10	Rent Paid		\$800.00	\$800.00
Oct 15/10	Rent Paid		\$800.00	0
Nov 1/10	Rent Due	\$1,600.00	0	\$1,600.00
Nov 20/10	Rent Paid		\$800.00	\$800.00

Dec 1/10	Rent Due	\$1,600.00	0	\$2,400.00
Dec 2/10	Rent Paid		\$1,600.00	\$800.00
Dec 22/10	Rent Paid		\$800.00	0
Jan 1/11	Rent Due	\$1,600.00	0	\$1,600.00
Jan 2/11	Rent Paid		\$1,600.00	0
Feb 1/11	Rent Due	\$1,600.00	0	\$1,600.00

The landlord further testified that no money has yet been received for rent for the month of February, 2011, and the pet damage deposit has not yet been paid by the tenant.

The landlord also testified that the City office has sent him letters, copies of which were provided in advance of the hearing which state that as the registered owner, he is responsible to ensure compliance of municipal bylaws with respect to maintenance of the property, and that the property is unsightly with an overflowing collection of carts at the front driveway and discarded mattress and television at the rear yard. The letter also threatens legal action as well as fines. He stated that he has been in touch with City officials and is doing what he can to correct the situation, but the tenant has a dog and the tenant does not answer his phone.

The landlord served the tenant with a 1 Month Notice to End Tenancy for cause on January 1, 2011 personally. That notice, a copy of which was provided in advance of the hearing states that the tenant has been repeatedly late paying the rent, that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, and the security or pet damage deposit was not paid within 30 days as required by the tenancy agreement. The notice is dated January 1, 2011 and has an expected date of vacancy of January 31, 2011.

The landlord also provided copies of 10 Day Notices to End Tenancy for Unpaid Rent or Utilities that were served on the tenant on September 15, 2010 and December 15, 2010 and stated that the tenant paid the rent for those months within the 5 days permitted under the *Act*.

The landlord asks for an Order of Possession, a monetary order in the amount of \$1,600.00 and permission to retain the security deposit in the amount of \$800.00 in partial satisfaction of the claim.

Analysis

I have reviewed the documentation provided by the landlord, and I find that the effective date of the notice to end tenancy is incorrect and is not in compliance with the *Residential Tenancy Act*:

- 47 (2)** A notice under this section must end the tenancy effective on a date that is
- (a) not earlier than one month after the date the notice is received, and
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

However, Section 53(1) of the *Act* states that if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with the *Act*, the notice is deemed to be changed to the earliest date that complies. I therefore find that the earliest date that does comply is February 28, 2011 and I find that the notice is deemed to be effective on February 28, 2011.

And further,

47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

In the circumstances, I find that the tenant has not applied for dispute resolution to dispute the notice, and is therefore is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. I also find that the landlord has proven that the tenant is repeatedly late paying rent.

I find that the landlord is entitled to an Order of Possession effective February 28, 2011 and to a monetary order in the amount of \$1,600.00. The landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective February 28, 2011. The tenant must be served with the Order of Possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I further order that the landlord retain the security deposit and interest of \$800.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$850.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

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: February 11, 2011.

Residential Tenancy Branch