



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNSD, MNDC

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent or utilities, to keep all or part of the security deposit, and for money owed or compensation for damage or loss under the Act; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

C.F., the tenant's wife and co-tenant in this tenancy, appeared for the tenant.

The rental unit consists of a single detached home. Pursuant to a written agreement, the fixed term tenancy started on November 20th, 2010 and ending on February 15th, 2011, at a rate of \$1400.00 payable on the 20th of each month. The tenant paid a security deposit in the amount of \$700.00.

The landlord testified that the rent was paid until January 30th. She stated that the tenant told her that they would move out on February 1st and then called to say that they would have to stay until February 15th. The landlord said that the rent was not paid therefore she served the tenant with a 10 Day Notice To End Tenancy. The landlord said that the tenant called to inform her that they would not be able to move out until the end of February. The landlord said that on a lawyer's advice, she approached the tenant on February 16th to reach an agreement to end the tenancy. The landlord said that the tenant blackmailed her to pay \$2100.00 or they would not move out. The landlord said she paid the amount on a mutual agreement that they would vacate by February 19th, but that the tenants are still residing at the unit. She said that the tenant called on February 19th to advise that they cannot move out because of the male tenant's mother's passing away.

The landlord made a monetary claim of \$5848.60 however amended this amount at the hearing as follows:

- | | |
|------------------------------------|-----------|
| - Unpaid rent for February 2011: | \$1400.00 |
| - Unpaid rent for March 2011: | \$1400.00 |
| - Return of the "blackmail" money: | \$2100.00 |
| - Filing fee: | \$ 100.00 |
| - Total: | \$4900.00 |

The tenant testified that she paid the landlord \$2100.00 on move-in day, which covered rent for that month as well as the security deposit. She stated that at the time to collect rent on January 20th, 2011 the landlord's husband asked them to move out earlier than the date specified on the fixed term agreement.

The tenant said that she paid rent into February on a *per diem* basis in the amount of \$451.60 and the landlord issued an amended tenancy agreement with a termination date of February 1st, 2011. The tenant told the landlord's husband that they would not be able to move out until February 15th. She stated that on February 11th, she gave the landlord \$3500.00 cash for rent but that she did not get a receipt. At that time, the tenant said that the parties reached an agreement whereby the landlord would refund \$2100.00 for rent and the security deposit, and signed a "Rental Termination Letter" dated February 16th, 2011, specifying that the tenancy will end Saturday, February 19th, 2011. The tenant said that they were not able to find alternative accommodations by that date and paid the landlord rent for the month of March 2011.

The landlord stated that the tenant lied; that she did not receive \$3500.00 in cash, and that the March rent was not paid yet.

Analysis

The Landlord's Application for Dispute Resolution specifies that where the dispute involves a notice to End Tenancy, the Notice to End Tenancy must be given to the tenant before applying for dispute resolution, **and** the Notice to End Tenancy must be submitted to the Residential Tenancy Branch.

There was no Notice to End Tenancy submitted before me from the landlord. The tenant testified that she only received page 1 of the notice. Since the landlord did not serve the tenants in accordance with the above provision, the landlord's 10 Day Notice to End Tenancy is set aside.

Section 26(2) of the *Act* specifies that the landlord must provide the tenant with a receipt for rent paid in cash. I find that there was much disagreement between the parties, and that they accused each other of lying. I also note that the tenant dealt with the landlord's husband, and that the husband was not present to testify. The landlord did not make

submissions concerning her husband's actions, and whether he acted as agent in this tenancy. The tenant testified that she paid \$3500.00 for rent in cash to the landlord's husband and that she has a receipt to support proof of payment. The landlord stated that she gave back the tenant \$2100.00 pursuant to the Rental Termination Letter. I am not satisfied that the landlord proved, on a balance of probabilities, that the tenants did not pay rent. In the absence of receipts or more objective, material evidence the landlord's monetary claim is dismissed.

This leaves me with the fixed term rental agreement. Section 30 of the *Residential Policy Guideline* provides as follows:

"The agreement must state the date the tenancy ends, and whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date. If the parties do not agree that the tenant must vacate the rental unit at the end of the fixed term, and if the parties do not enter into a new tenancy agreement, the tenancy continues as a month to month tenancy."

The parties were at complete odds on the terms of the agreement. However, the burden was on the landlord to prove that the tenancy met the criteria to justify an order of possession against the tenants. The tenancy agreement provided by the landlord was not written on a RTB form. While it showed an end date of February 15th, 2011, it did not specify what happens after that date. However the Rental Termination Letter clarified that the tenancy would end on February 19th, 2011; this letter was signed by both parties. I am satisfied that this letter constitutes a new agreement specifying that the tenancy will end February 19, 2011. On that basis I find that the landlord is entitled to an Order of Possession.

Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant.

This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Since the landlord was partially successful with her claim, I find that she is entitled to recover \$50.00 from the filing fee associated with this application.

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: March 08, 2011.

Residential Tenancy Branch