



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MT, CNR, MNDC, OLC, OPT, AS, O, FF
MNDC, MNR, MNSD, OPC, OPR, FF

Introduction

This hearing dealt with cross applications from the tenant and landlord. The application by the tenant is to allow the tenant more time to make an application, cancel a notice to end tenancy for unpaid rent, compensation for damage or loss, order the landlord to comply with the *Act*, obtain an order of possession for the rental unit, allow a tenant to assign or sublet, other and recovery of the filing fee. The application by the landlord is for a monetary order for compensation for damage or loss, a monetary order for unpaid rent, to keep all or part of the security deposit, and order of possession for cause, an order of possession for unpaid rent and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is either party entitled to any of the above under the *Act*.

Summary of Background and Evidence

It was clarified at the start of the hearing that the tenant's application noted as 770996 is from the sub-let tenant and not the tenant on the lease signed with the landlord. The sub-let tenant vacated the rental unit December 2010 and has no claim on the tenancy therefore the sub-let tenant's application has been set aside in its entirety and is dismissed without leave to reapply.

The tenancy started in May, 2010 with rent of \$1320.00, the tenant paid a security deposit of \$660.00. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on March 3, 2011. The landlord served the tenant with a 1 month Notice to End tenancy for cause on February 24, 2011: the tenant has assigned or sublet the rental unit/site without landlord's written consent.

The landlord testified that the tenant has not paid the rent for March 2011 and that there is currently \$1320.00 outstanding in unpaid rent. The landlord stated that she has never agreed to the tenant subletting the rental unit and that in November 2010 when the tenant contacted her about the apartment, the tenant advised the landlord that she was

going out of town and that her boyfriend would be looking after her apartment for her. The landlord was not aware that the tenant had sublet the apartment to the person identified as the boyfriend and that in turn the boyfriend/sublet tenant had sublet to an unknown third party.

The landlord's agent stated that prior to this hearing he had to attend the rental unit with the police in attendance to verify the identities of all the people living in or making claim on the apartment. The landlord's agent stated that the tenant, during this attendance at the rental unit had advised him that she no longer lived in the rental unit and only wanted her belongings back.

As the rental unit is still occupied the landlord has requested an order of possession with the earliest date possible. The landlord in this application has also requested a monetary order for the unpaid rent.

The tenant testified that she believed the landlord knew she was subletting the apartment and commented that it was the current sublet tenant that owed the landlord the unpaid rent and not the tenant. The tenant has not made an application to dispute either notice served by the landlord nor has the tenant paid the March 2011 rent.

Analysis

Based on the documentary evidence and testimony I find that the tenant was properly served with a notice to end tenancy for non-payment of rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an order of possession.

As the landlord has been successful with an order of possession for unpaid rent an order of possession for the 1 month notice to end tenancy for cause will not be issued. It should be noted however that the landlord would have been issued an order of possession for the 1 month notice to end tenancy for cause if the notice for unpaid rent had not been in place.

I find that the landlord has established a claim for \$1320.00 in unpaid rent.

The landlord is entitled to recovery of the \$50.00 filing fee.

The sublet tenant's application is dismissed in its entirety.

The sublet tenant is not entitled to recovery of the \$50.00 filing fee.

Conclusion

The sublet tenant's application is dismissed in its entirety.

I hereby grant the landlord an **Order of Possession**, effective **2 days** after service of the Order upon the **Tenant and All Occupants**. This Order must be served on the **Tenant and All Occupants** and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim for \$1320.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$660.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$710.00** ($\$1320.00 + \$50.00 = \$1370.00 - \$660.00 = \710.00)

A monetary order in the amount of **\$710.00** has been issued to the landlord and a copy of it must be served on the tenant. If the amount is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: March 31, 2010

Residential Tenancy Branch