



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPC, MNR, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for an Order of Possession for cause, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant for the cost of this application.

Both parties attended the conference call hearing and gave affirmed testimony. The landlord also provided evidence to the Residential Tenancy Branch and to the tenant in advance of the hearing. All evidence 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 cause?

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

Background and Evidence

This month-to-month tenancy began on November 1, 2010 and the tenant still resides in the rental unit. Rent in the amount of \$625.00 per month is payable in advance on the first day of each month. On October 28, 2010 the landlord collected a security deposit from the tenant in the amount of \$312.50.

The landlord testified that the tenant has been continuously late paying the rent, and the landlord has only received \$300.00 from the tenant for the month of January, 2011 and no rent at all for the months of February, March and April, 2011.

The landlord's agent served the tenant with a 1 Month Notice to End Tenancy for Cause on February 7, 2011. A copy of the notice was provided in advance of the hearing, and it is dated January 31, 2011 and contains an expected date of vacancy of February 28, 2011. The notice also states that the reason for issuing the notice is that the tenant is repeatedly late paying rent.

The tenant testified that on January 14, 2011 she received a letter from the resident manager's wife stating that she is not the landlord and that rent should not be paid to her. The tenant stated that she gave a copy of that letter to Social Services. She further stated that Social Services paid the resident manager's wife the rent every month up to February, 2011, which was the rent payment for the month of March, 2011 but did not provide any evidence to substantiate that evidence.

The tenant further stated that she receives \$590.00 for shelter allowance and pays the remaining \$35.00 per month herself. She also stated that she has a statement showing that the rent was paid, but has not provided any of that evidence to the landlord or to the Residential Tenancy Branch.

Analysis

The *Residential Tenancy Act* states that a landlord may serve a tenant with a notice to end tenancy if the tenant is repeatedly late paying rent. It further states that a tenant may dispute the notice to end the tenancy by making an application for dispute resolution within 10 days after the date the tenant receives the notice. If the tenant does not dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

In the circumstances, I find that the tenant was personally served with the notice to end tenancy on February 7, 2011 and has not disputed the notice, and is therefore conclusively presumed to have accepted that the tenancy has ended. However, I also find that the effective date of the notice ought to be March 31, 2011, not February 28, 2011; the *Act* also specifies that a notice must end the tenancy effective on a date that is not earlier than one month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement, which is the 1st day of each month. The *Act* also states that incorrect dates in a notice to end a tenancy are automatically corrected to the date that complies with the *Act*, and I find that date to be March 31, 2011.

With respect to the tenant's testimony that she paid the rent to the resident manager's wife, I find that the tenant has failed to establish that. The tenant did not provide any evidence to support her testimony, and I find that the landlord has established a claim for \$2,200.00 in unpaid rent from January, 2011 to April, 2011.

The *Residential Tenancy Act* also states that where I order payment from a tenant to a landlord, I may order that the security deposit due to the tenant be set off from any monetary order made, and I find that the landlord holds the sum of \$312.50 in trust and

that amount be retained by the landlord and deducted from the monetary order for unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant. If the tenant is served with the Order of Possession and fails 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 order that the landlord retain the security deposit and interest of \$312.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,937.50. 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: April 15, 2011.

Residential Tenancy Branch