

## **DECISION**

### **Dispute Codes**

Tenant CNC  
Landlord OPC, MND, MNR, MNSD, FF

### **Introduction**

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent or utilities, compensation for damage to the unit site or property, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notice to End Tenancy for Cause.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on July 15, 2011 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by personal delivery on July 14, 2011.

The Landlord and Tenant both confirmed that they received the other's hearing packages.

### **Issues to be Decided**

Landlord:

1. Is the Landlord entitled to an Order of Possession for Cause?
2. Is there unpaid rent or utilities and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is there damage to the unit, site or property and if so how much?
5. Is the Landlord entitled to compensation for damage?
6. Is the Landlord entitled to retain the Tenant's security deposit?

Tenant:

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy for Cause?

### **Background and Evidence**

This tenancy started on August 20, 2010 as a month to month tenancy. Rent is \$1,100.00 per month payable in advance of the last day of each month. The Tenant paid a security deposit of \$550.00 on August 20, 2010.

The Landlord said that the Tenants have been repeatedly late with their rent payment 8 months of the 12 months of the tenancy. The Landlord said he had a written record of the payment dates which he provided in his testimony. The Landlord said rent was paid in cash and he did not issue receipts for the rent payments unless the Tenants requested a receipt. The Landlord continued to say the Tenants were late with the rent payment September, October, and December of 2010 and January February, March, May, and June, 2011. The Landlord provided two Witnesses that gave affirmed testimony that the Landlord had told them the Tenants did not pay their rent on time. Witness P. A. said she was aware of the payment schedule the Landlord had provided and she said it was correct. As well she said she collected the rent for February and March, 2011 and both months the Tenants were late with the rent payment. Witness M. W. testified that the Landlord had told her the Tenants did not pay their rent on time and as she is a tenant in the house she saw the Landlord trying to collect the rent from the Tenants on different occasions. The Witness M. W. also testified that she has given her notice to end her tenancy with the Landlord because the Tenants have harassed her and were very noisy, so she does not want to live at the rental unit anymore. The Witness M. A. said the Tenants called her names and their dogs and children were loud and the Tenants made living in the basement suite difficult.

The Landlord continued to say that the Tenants did not care for the lawn in the yard and it is now dead. The Landlord said he is making a claim for \$450.00 for damages but he does not have any invoices or receipts to prove the loss.

The Tenants said they paid their rent on time in every month except for February, 2011 and that the Landlord was lying about the rent payment schedule. The Tenant continued to say that the Landlord wanted to be paid in cash and he did not give them a receipt for the rent payment until they asked him for one in June and July, 2011. The Tenants both said they made the rent payments on time, but they said they had no evidence to prove when the payments were made.

The Tenant continued to say that they did not have any disputes with the other tenant Witness M.W. and they do not agree with what the Witness M.W. had said.

The Tenant continued to say they had not damaged the house or yard and the move in inspection report showed that the yard needed care and watering when they moved in.

Both the Landlord and the Tenant agreed there were no arrears of rent at the present time, but the Landlord said there was \$61.84 owing on the water bill that was in the Tenants name.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding.

## Analysis

There was much contradictory testimony and little written evidence that corroborated either the Landlord or Tenants' testimony. The Landlord did provide two Witnesses that corroborated the Landlord's testimony that Tenants were repeatedly late with their rent payments. As well the Witness M.W. said the reason she was moving out of the rental unit was because the Tenants were harassing her and they were noisy. This affirmed testimony by the Witnesses I accept as corroborating evidence of the Landlord's testimony.

Section 26 of the Act says that a Tenant must pay rent when it is due under the Tenancy agreement, whether or not the landlord complies with this act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

Section 46 (1) (b) of the Act says a landlord may end a tenancy by giving notice to end tenancy if the tenant is repeatedly late paying the rent.

The Tenant does not have the right to deduct all or a part of the rent nor withhold it past the due date which is the last day of each month. As well the Landlord has established grounds by the witness testimony to support his claim that the Tenants were repeatedly late with the rent payment. I accept the Landlord and the Landlord's Witnesses' testimony that the Tenants were late with their rent payment more than 3 times in the year which under section 38 of the Residential Tenancy Policy Guideline is the minimum number of late payments to justify a Notice to End Tenancy for Cause. I find the Notice to End Tenancy for Cause dated June 30, 2011 is held in effect with an effective vacancy date of August 31, 2011.

With respect to the Landlord's claim for compensation of \$2,100.00 for unpaid rent and utilities, damage to the unit and to keep the Tenants security deposit as partial payment for those damages, I find the Landlord has not provided evidence that establishes a loss happened nor has he proven the amount of the loss therefore I dismiss the Landlord's compensation claim with leave to reapply.

The Tenants did not provide any evidence beyond their testimony why the Notice to End Tenancy for Cause should be cancelled. In cases where it is the Applicants word against the Respondents word the burden of proving a claim lies with the Applicant and when it is just the Applicants word against that of the Respondent that burden of proof is not met. Consequently I find the Tenants application to cancel the Notice to End

Tenancy for Cause is dismissed for lack of proof. The Tenants did not establish grounds that proved the rent payments were made on time.

As the Landlord has been partially successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep \$50.00 of the Tenant's security deposit in full payment of the filing fee for this proceeding.

### Conclusion

An Order of Possession effective August 31, 2011 has been issued to the Landlord. A copy of the Orders must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia.

The Tenants' application is dismissed with leave to reapply.

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*.

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Residential Tenancy Branch