

DECISION

Dispute Codes: Landlord: OPR, MNR, MNSD and FF
 Tenants: MT, CNC, MNR, MNDC, MNSD, ERP, LAT, SS & O

Introduction

These applications were brought by both the landlords and the tenants.

By application of July 12, 2011, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on July 7, 2011 by posting on the tenants' door. The landlord sought a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding. In addition, I have exercised the discretion granted under section 64(3)(c) of the *Act* to permit the landlords to amend the application to request authorization to retain the security deposit in set off against any balance found to be owed to them..

By application also of July 7, the tenants sought more time to make application, an order setting aside a 30-day Notice to End Tenancy for cause, a Monetary Order for the cost of emergency repairs, damage or loss under the legislation or rental agreement, return of their security deposit, emergency repairs, authorization to change locks, authorization for substitute service and other unspecified matters.

Issues to be Decided

This dispute requires a decision only on whether the landlord is entitled to an Order of Possession and a Monetary Order for the unpaid rent, and whether the tenants are entitled to a Monetary Order and the other orders requested. .

Background and Evidence

This tenancy began on October 23, 2010. Rent is \$1,500 per month and the landlord holds a security deposit of \$750 paid on November 1, 2010.

As a matter of note, the landlord submitted into evidence an Order of the Supreme Court of British Columbia dated June 27, 2011 which granted authority for sale of the

rental building out of the court, exclusive right to sell to the female landlord and ordering the co-owner and any tenants to facilitate showing of the property. The Order also directs that tenants pay rent directly to counsel for the applicant landlord, and she be provided with copies of records pertaining to the tenancy.

Landlords' application

As to the landlord's application, she gave evidence that the Notice to End Tenancy of July 7, 2011 was served when the tenants had failed to pay the rent for July 2011. In the interim, the tenants have not paid the rent for August 2011. The tenants concurred with the claimed rent arrears and gave evidence that they have found new accommodation and would be moving on August 15, 2011.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due irrespective of any alleged non-compliance of the landlord with the legislation or rental agreement, for which other remedies are available.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenants did make the application but the rent remains unpaid. Therefore, I find that the landlord is entitled to an Order of Possession effective at 1 p.m. August 15, 2011.

I further find that the landlord is entitled to a Monetary Order for the two months' rent and authorization to retain the security deposit in set off and, as the application has succeeded, I find that the landlords are also entitled to recover the \$50 filing fee from the tenants.

Tenants' application

As the end of the tenancy is imminent, I am dismissing the tenants' claim for a change of locks and emergency repairs as moot. As the tenants' application was on time, the request for more time is moot and as there was no Notice to End Tenancy for cause, that request is also moot, and there is no evidence in support of a request for substitute service.

The tenants have made a claim for a monetary award of \$5,000 on the following claims:

Yard work - \$1,200. The tenants stated that because the yard was in serious need of attention, they contracted a service supplier to do the maintenance at \$300 per month for four months. The female landlord stated she had no knowledge of any agreement by which the landlord authorized such an expense or accepted responsibility for the yard work. By the time the matter was brought up, her estranged spouse who had made the agreement was no longer in attendance. As the claim is substantial and as the tenants have provided no proof of having made such payments or agreement with the landlord to do so, I must dismiss this claim.

Loss of co-tenant - \$1,000. The female tenant claims that as a result of a confrontation between herself and the female landlord, her mentally disabled son was so disturbed by the hostility that he left the rental unit and, in consequence, she lost \$1,000 of his contribution toward the rent. The landlord firmly denied that she had acted unreasonably and noted that she had requested police attendance on her every visit to the rental unit after she had been denied entry on her first attempt. While the tenants' reluctance to recognize her as landlord was understandable as they had made the agreement with the male landlord, I do not find sufficient cause to make an award on this claim.

Fridge and rats - \$300. The tenants make claim that they had to replace the refrigerator which had broken, and that the landlord had taken no action to deal with a rat problem reported to her. The landlord concurred that the tenants had shown her rat droppings and reported the broken fridge, but she had done so on July 22, 2011, after the end date set by the 10-day Notice to End Tenancy. As the tenants own the fridge, they are at liberty to remove it at the end of the tenancy and as the problem was reported to the landlord after the end-date set by the notice, I cannot make an award for the claims.

Security deposit - \$750. Having awarded the security deposit to the landlord in set off, I must find that it is no longer available for claim by the tenants.

Therefore, I dismiss the tenants' application in its entirety.

In addition to the Order of Possession for the landlords, I find that they are owed by the tenants an amount calculated as follows:

Rent for July 2011	\$1,500.00
Rent for August 2011	1,500.00
Filing fee	50.00
Sub total	\$3,050.00
Less retained security deposit (No interest due)	- 750.00
TOTAL	\$2,300.00

Conclusion

The landlords' copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on August 15, 2011.

The landlords' copy of this decision is also accompanied by a Monetary Order for \$2,300.00, enforceable through the Provincial Court of British Columbia, for service on the tenants.

The landlord remains at liberty to make application for any damages as may be ascertained at the end of the tenancy.

August 11, 2011