

DECISION

Dispute Codes: OPC and FF

Introduction

By application of July 28, 2011, the landlord seeks an Order of Possession pursuant to a one-month Notice to End Tenancy for cause served on July 4, 2011 in person. As a matter of note, the Notice to End Tenancy set an end date of August 4, 2011 which is automatically corrected under section 53(2) of the *Act* to August 31, 2011, the earliest effective date permitted. The landlord also sought a Monetary Order for unpaid rent and utilities and recovery of the filing fee for this proceeding.

In addition, as authorized under section 64(3)(c) of the *Act*, I have permitted the landlord to amend the application to request authorization to retain the security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing sent by registered mail on August 2, 2011, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent and utilities, recovery of the filing fee and authorization to retain the security deposit in set off against the balance owed.

Background and Evidence

According to the landlord, this tenancy began on December 1, 2009. Rent is \$1,000 per month and the landlord holds a security deposit of \$500 paid at the beginning of the tenancy. There is no written rental agreement.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served for cause, after a series of complaints of disturbances of other tenants including loud music played late into the night, fights involving guests or occupants of the rental unit and keeping the patio and entrance in an unsightly condition. The landlord submitted documentary evidence, summarized as follows:

1. April 2, 2010 – Letter from another tenant to strata property manager complaining of loud noise and music late into the night over four months;
2. April 6, 2010 – Letter from strata's property manager advising of a complaint regarding unreasonable noise and warning a second complaint will result in a \$200 fine;
3. April 14, 2010 - Letter from another tenant advising of loud music 1 a.m. on April 9, 2010 and again on April 11, 2010. Police called on both occasions;
4. April 14, 2010 – Letter from property manager advising that the \$200 fine had been imposed;
5. May 11, 2011 – Email complaint from neighbouring tenant reporting loud music to 6 a.m., constant intoxication of subject tenant/occupants for over a year;
6. May 12, 2011 – Complaint forwarded to landlord by property manager;
7. May 13, 2011 – Email report of a fight outside the rental unit two weeks prior, and a few days later, an incident in which a male occupant, apparently under the influence of drugs, was swinging a baseball bat outside the rental unit. Police attended both incidents.
8. July 1, 2011 – Email regarding litter and furnishings on deck and litter around entrance to rental unit;
9. Jun 2, 2011 – Email complaint to property manager from another tenant advising of loud music and a fight outside the rental unit at 3 a.m. Police attended;

10. July 4, 2011 – Email advice to landlord from property manager reporting the previous incident.

With respect to the request for a Monetary Order, the landlord gave evidence that the tenant had paid the rent for July 2011, requested in the application, late in the month but at the time of the hearing, she remained in the rental unit and had not paid the rent for August.

In addition, the landlord submitted billings from BC Hydro for the period from Marcy 10 to August 17, 2011. After deducting a \$200 payment made by the tenant on May 2, 2011, the landlord claims unpaid hydro bills for of \$555.58 for which the tenant is responsible.

Analysis

Section 47(1)(d) of the *Act* provides that a landlord may serve a one-month Notice to End Tenancy if a tenant

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,

Section 47(4) and (5) of the *Act* state that a tenant may make application to contest a notice to end tenancy for cause within 10 days of receiving it, or the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate by that date. In the present matter, the tenant did not make application to contest the notice.

Therefore, I find that the landlord is entitled to an Order of Possession to take effect at 1 p.m. on August 31, 2011.

As the landlord's application has succeeded on its merits, I find that he is entitled to recover the filing fee for this proceeding from the tenant.

I further find, pursuant to section 72(2)(b) of the *Act*, that the landlord may retain the security deposit in set off against the balance owed.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

Rent for August 2011	\$1,000.00
Unpaid hydro billings	555.58
Filing fee	50.00
Sub total	\$1,605.58
Less retained security deposit (No interest due)	- 500.00
TOTAL	\$1,105.58

Conclusion

The landlord's 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 31, 2011.

In addition to authorization to retain the security deposit in set off against the balance owed, the landlord's copy of this decision is also accompanied by a Monetary Order for \$1,105.58, enforceable through the Provincial Court of British Columbia for service on the tenant.

August 30, 2011