



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with the landlord's application for an Order of Possession and a Monetary Order for unpaid rent. The female tenant appeared at the hearing and confirmed she was representing both tenants. Both parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the commencement of the hearing I determined that the landlord had not served her documentary evidence upon the tenants in a manner that complies with the Act. Accordingly, the landlord's documentary evidence was not accepted or considered. I did not receive any documentary evidence from the tenants. Therefore, this hearing proceeded based upon verbal testimony only.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The parties provided the following undisputed testimony. The tenancy commenced June 28, 2011 and the tenants paid a \$200.00 security deposit. The tenants are required to pay rent of \$1,000.00 on the 1st day of every month. The tenants paid rent for July 2011 but did not pay rent for August 2011. The female tenant was personally served a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on August 16, 2011 indicating \$1,000.00 in rent was outstanding and an effective vacancy date of August 26, 2011. The tenants did not pay the outstanding rent, nor have the tenants paid any monies to the landlord for September 2011. The tenants continue to reside in the rental unit; however, the tenants agreed to vacate the rental unit by September 29, 2011.

The landlord was agreeable to permitting the tenants to continue to occupy the rental unit until September 29, 2011 and requested an Order of Possession effective at 1:00 p.m. on that date.

During the hearing, the landlord requested compensation for loss of rent for September 2011 and authorization to retain the security deposit in partial satisfaction of the rent owed.

The tenant submitted that she had filed to dispute the 10 Day Notice by making an Application for Dispute Resolution on-line; however, the tenant could not provide a file number and acknowledged that she had not served any documents upon the landlord.

The tenant testified that there was an agreement with the landlord for them to deduct \$700.00 from rent owed in recognition of work the tenants had done to the residential property. The landlord disputed that there was such an agreement but acknowledged there was some discussion about the tenants doing some painting.

The tenant also wanted to introduce evidence pertaining to the condition of the rental unit when they moved in; however, I did not permit this testimony as it is not relevant to the application before me. The tenant was informed of her right to make her own application if she wishes to seek compensation for damages or loss.

Analysis

Based upon the mutual agreement to end the tenancy September 29, 2011 I provide the landlord with an Order of Possession effective at 1:00 p.m. on September 29, 2011. To enforce the Order of Possession it must be served upon the tenants. The Order of Possession may be filed in The Supreme Court of British Columbia to enforce if necessary.

With respect to the landlord's monetary claim I find as follows. Under the Act, a tenant must pay rent in accordance with their tenancy agreement unless the tenant has the legal right to make deductions from rent. A legal right to make deduction is provided by in specific provisions of the Act. The tenant did not satisfy me that the landlord had agreed to a specific deduction from rent. The tenants did not have authorization to reduce rent from a Dispute Resolution Officer and I find no other provision in the Act that would have otherwise given the tenants the legal right to withhold rent. Therefore, I find the tenants were obligated to pay the full amount of rent when due.

I am satisfied the landlord is entitled to recover unpaid rent and loss of rent from the tenants for the months of August and September 2011 since they continued to occupy the rental unit in September 2011. I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the rent owed and I provide the landlord with a Monetary Order in the net amount of \$1,800.00 to serve upon the tenants. The landlord may enforce the Monetary Order in Provincial Court (Small Claims) as necessary.

Conclusion

The landlord has been provided an Order of Possession effective at 1:00 p.m. on September 29, 2011. The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$1,800.00 to serve upon the tenants.

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: September 23, 2011.

Residential Tenancy Branch