



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent and for cause pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord had initially named a fourth respondent in his application for dispute resolution, IA. Since he vacated the rental unit by mid-October 2011, the landlord asked for permission to amend his application to remove IA from his application. I agreed to this request to amend the landlord's application.

The landlord testified that she handed the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) to Tenant JS on October 1, 2011. Tenant JS confirmed receipt of this Notice and Tenant AC confirmed that Tenant JS gave him a copy of this Notice. The landlord testified that she handed Tenant JS a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on October 5, 2011. Tenant JS confirmed receiving this notice from the landlord and letting Tenant AC see this notice. I am satisfied that these documents were served to the respondents in accordance with the *Act*.

The landlord testified that she handed Tenant AC a copy of her dispute resolution hearing package on October 20, 2011, and Tenant JS a copy of that package on October 21, 2011. Both of these tenants confirmed that the landlord served these packages to them as stated by the landlord. The landlord testified that she tried to hand Tenant AH (the sub-tenant) a copy of the package on October 20, 2011. When she refused acceptance of this package, the landlord posted a copy of the package on the sub-tenant's door at the rental premises at 5:30 p.m. on October 20, 2011. This posting

was witnessed by Tenant AC. I am satisfied that the packages were served to Tenants AC and JS in accordance with the *Act*. Since posting on a door is not one of the ways that an application for a monetary award can be served to a tenant under section 89(1) of the *Act*, I am not satisfied that the landlord served the sub-tenant with her application for a monetary award. Consequently, any monetary award I might consider with respect to this application can only be issued against Tenants CA and JS.

At the commencement of the hearing, the parties in attendance agreed that Tenants CA and JS vacated the rental unit on October 1, 2011. Tenants CA and JS agreed that they had not sought the landlord's authorization to sublet the premises to the sub-tenant and another individual, IA, who vacated the rental unit in mid-October 2011. Subtenant AH remains in the rental unit, although she has no written tenancy agreement with either Tenants CA and JS, or with the landlord.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or for cause? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy commenced as a fixed term tenancy with Tenants AC and JS on February 1, 2011. When this fixed term expired on June 30, 2011, the tenancy commenced on a month-to-month basis. Monthly rent according to the tenancy agreement was set at \$1,200.00, payable in advance on the first of each month. The landlord continues to hold \$500.00 of the \$600.00 security deposit paid by Tenants AC and JS on January 17, 2011.

The landlord issued the 1 Month Notice because his tenants had sublet the rental premises to Subtenants AH and IA. The landlord issued the 10 Day Notice for non-payment of rent of \$1,200.00 for October 2011. The parties agreed that there has been no payment of rent to the landlord for October or November 2011.

Analysis

The tenants failed to pay the October 2011 rent within five days of receiving the 10 Day Notice. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of this tenancy on the effective date of the notice. In this case, this required all tenants of the premises to vacate the premises by October 16, 2011. As that has not occurred, I

find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the respondents. If the respondents do not vacate the rental unit within the 2 days required and provide vacant possession to the landlord, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the undisputed evidence presented by the parties in attendance at this hearing, I am satisfied that the landlord is entitled to a monetary award for unpaid rent for October and November 2011 to be issued against Tenants AC and JS. I am also satisfied that the landlord is entitled to a monetary award of \$50.00 to recover his filing fee from Tenants AC and JS.

Although the landlord's application does not seek to retain the tenants' security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit plus interest in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the respondent(s). Should the respondent(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour against Tenants AC and JS for unpaid rent and for recovery of the filing fee for this application, less the retained portion of the tenants' security deposit. I issue these Orders in the following terms:

Item	Amount
Unpaid October 2011 Rent	\$1,200.00
Unpaid November 2011 Rent	1,200.00
Less Security Deposit	-500.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,950.00

The landlord is provided with these Orders in the above terms and these tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: November 10, 2011

Residential Tenancy Branch