



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNDC, FF

Introduction

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

- an Order of Possession 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 their 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. Both tenants confirmed that they received the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) handed to the female tenant by the landlords on September 16, 2011. Both tenants confirmed that they received copies of the landlords' dispute resolution hearing package sent by the landlord by registered mail on October 26, 2011. I am satisfied that the landlords served these documents and their written evidence to the tenants in accordance with the *Act*.

At the commencement of the hearing, male Landlord JR (the landlord) asked to increase the amount of the monetary award requested from \$739.00 as set out in the original application for dispute resolution to \$1,883.00. He said that this increase resulted from the tenants' failure to pay any portion of their \$1,054.00 for November 2011 rent. Since the tenants agreed that this additional amount was now owing, I allowed the landlord to amend the amount of the requested monetary award to \$1,883.00 to reflect this unpaid rent.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for cause? Are the landlords entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around each are set out below.

The parties agreed that this tenancy commenced on or about November 1, 1982. Although the tenancy may have been for a fixed term at some point, at present this is a periodic tenancy. Monthly rent is currently set at \$1,054.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$186.00 security deposit paid on or about November 1, 1982.

The landlord testified that the landlords issued the 1 Month Notice because of the tenants' failure to address repeated requests to remove significant quantities of hoarded material from their rental unit. In that Notice, requiring the tenants to end this tenancy by October 16, 2011 (corrected at this hearing to October 31, 2011), the landlord cited the following reasons for the issuance of the Notice:

Tenant or a person permitted on the property by the tenant has:

- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

Rental unit/site must be vacated to comply with a government order.

Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

The landlords submitted evidence of inspections conducted by the City of Vancouver's Fire Prevention Division. These included Notices of Violation issued to the landlord requiring the removal of 70% of stored items in this rental unit within 14 days. In the inspection report of June 28, 2011, the fire inspector reported "no change in the amount of stored combustibles" in this rental unit. The landlord testified that at the most recent inspection of the rental unit on September 16, 2011, no noticeable improvement had occurred. The landlord advised the tenant of the fire by-law violations and the reinspection charge that the City would be applying to each reinspection until the violations had been corrected. The landlord also entered into written evidence an email from a member of the City's Compulsive Hoarding Project Team and an invoice paid by the landlord on September 6, 2011 for the \$224.00 inspection fees. The landlord also entered into evidence photographs to demonstrate the extent of the hoarding and the

fire hazard presented by the tenants' failure to adequately address the concerns raised by the fire inspectors.

The landlord testified that the tenants have now extended their hoarding practices to common areas of the building. He said that the landlord is at risk of losing fire insurance for this building if they do not take action to ensure that the by-law violations issued by the Fire Prevention Division are corrected. He said that they have offered to help the tenants clean up the material or assist them to move to another location, but the tenants have not co-operated with these offers.

The landlord also testified that the tenants are now behind in their rent. The landlords' application for a revised monetary award of \$1,883.00 included \$515.00 still owing in rent from October 2011, \$1,054.00 for November 2011, \$224.00 for the City of Vancouver's inspection fees that the landlords have paid, and the \$50.00 filing fee for this application.

The tenants did not apply for dispute resolution after they received the landlords' 1 Month Notice. They did not submit any written or photographic evidence. They did not dispute the landlords' claim that they have failed to pay rent owing or the inspection fee charged by the City of Vancouver.

The female tenant testified that the situation in the landlords' photographs does not accurately reflect the recent progress the tenants have made in removing material from the rental unit. She said that she has removed about 100 bags of material. When asked as to the accuracy of the landlord's photographs, she questioned only the last of the photographs, showing material in a bedroom. She testified that there was now a clear path where a person could walk around the sides and end of the bed, an improvement from the previous situation. She said that she is on a disability and that she finds situations such as the landlords' concerns about the state of the rental unit stressful.

The male tenant testified that there are lots of things piled up in the rental unit. He admitted that the tenants "don't throw out too much", which would appear to be an understatement if the landlords' photographs are accurate.

Analysis – Landlords' Application to End Tenancy and an Order of Possession

The tenants have not made application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the tenants' failure to take this action within ten days led to the end of this tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by October 31, 2011 and not October 16, 2011 as stated on the 1 Month Notice.

In reviewing the grounds stated on the landlords' 1 Month Notice, I find that there is no requirement that the tenants must vacate the rental unit to comply with a government order. The Fire Prevention Division did not issue an order requiring the tenants to vacate the rental unit. However, I find on a balance of probabilities that the landlords had sufficient grounds on all of the other reasons cited in their 1 Month Notice to end this tenancy for cause. I find that there is abundant evidence of hoarding that has continued despite repeated requests from the landlords and notices of violations issued by the City's Fire Prevention Division. Even if the female tenant is correct in maintaining that there is now a clear path around the sides and end of one of the beds, I find that this is not sufficient action to comply with the by-law violation order. Other than the female tenant's oral testimony, there is no evidence before me to show that the tenants have in fact removed material from the rental unit in sufficient quantities to set aside the landlord's 1 Month Notice. I find that the landlords have valid concerns about the impact that continued non-compliance with fire safety violations noted by the Fire Prevention Division would have on their ability to retain fire insurance for this rental property.

For the reasons noted above and as mentioned at the hearing, I find that the landlords are entitled to an Order of Possession to take effect by 1:00 p.m. on November 30, 2011. The landlords will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit by the time required, the landlords may enforce this Order in the Supreme Court of British Columbia. Although the landlords would normally be entitled to a 2 day Order of Possession, I have allowed the tenants additional time as I recognize that it will take time for them to clear this rental unit of their belongings.

Analysis - Landlords' Application for a Monetary Award

Based on the undisputed evidence submitted by the landlords, I find that the landlords are entitled to a monetary award of \$515.00 for unpaid October 2011 rent, \$1,054.00 for unpaid rent for November 2011, and \$224.00 for inspection fees charged by the City of Vancouver and paid by the landlord.

Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award.

Since the landlords have been successful in their application, I allow them to recover their \$50.00 filing fee from the tenants.

Conclusion

The landlords are provided with a formal copy of an Order of Possession to take effect by 1:00 p.m. on November 30, 2011. Should the tenant(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 award in the landlords' favour in the following terms which allows the landlords to recover unpaid rent and losses arising out of this tenancy, to recover the filing fee for this application and to retain the tenants' security deposit in partial satisfaction of the monetary award:

Item	Amount
Unpaid November 2011 Rent	1,054.00
Inspection Fees Charged by City of Vancouver	224.00
Less Security Deposit plus Interest (\$186.00 + \$290.27 = \$ 476.27)	-476.27
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,366.73

The landlords are provided with these Orders in the above terms and the 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 18, 2011

Residential Tenancy Branch