



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPC, MNR and FF

Introduction

This application was brought by the landlord on November 2, 2011 seeking an Order of Possession pursuant to a one-month Notice to End Tenancy for cause, repeated late payment of rent, served on October 31, 2011 by posting in the tenant's mail box and a Monetary Order for unpaid rent.

The landlord also requested that his application be amended to include a request for authorization to retain the security deposit in set off against the balance owed. I declined to permit the application to be amended for two reasons:

1. The Notice to End Tenancy served by placement in the tenant's mail slot on October 31, 2011 would be deemed to have been received three days later under section 88 of the Act. Therefore, the end of tenancy date is automatically changed from November 30, 2011 to December 31, 2011 by section 53 of the Act.;
2. The tenant had voluntarily agreed to end the tenancy on November 30, 2011 and I believe that decision took into account an expectation that the security deposit might be returned. Given that the omission of the security deposit request from the landlord's application might have prejudiced the tenant's decision to honour the Notice to End Tenancy, I felt it inappropriate to amend the application without prior notice..

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.

Background and Evidence

This tenancy began on April 1, 2011. Rent is \$950 and the landlord holds a security deposit of \$475.

During the hearing, the landlord stated and the tenant agreed that the tenant's rent was behind by \$2,600. While the tenant did not contest the amount owed, he gave explanation that the arrears had resulted from a loss of employment and he stated that he had grievance with repair and other issues with the tenancy.

The tenant stated that he had secured new accommodation and would be leaving the tenancy at the end of November 2011.

Analysis

Section 47(1)(b) of the *Act* provides that a landlord may issue a one-month notice to end tenancy for cause if a tenant is repeatedly late paying rent. As a matter of practice, three late payments within twelve months are considered to establish repeated late payment.

In the present matter, the tenant agreed that the rent has fallen into arrears in the amount of \$2,600.

Section 26 of the *Act* requires that tenants pay rent when it is due irrespective of any grievances they may have for which other remedies are available.

Therefore, while this matter might more appropriately been brought under section 46 of the *Act* for none payment of rent, I find that the size of the arrears establishes at least three late payments. For that reason, in addition to the agreement expressed between the parties during the hearing, I find that the landlord is entitled to an Order of Possession to take effect at 1 p.m. on November 30, 2011.

I further find, based on the agreement of the parties, that the landlord is entitled to a monetary award for the \$2,600 in unpaid rent.

In addition, as the application has succeeded on its merits, as authorized under section 72 of the *Act* I find that the landlord is entitled to recover the \$50 filing fee for this proceeding from the tenant.

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 November 30, 2011.

The landlord's copy of this decision is also accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for \$2,650.00 for service on the tenant.

The disposition of the security deposit remains to be determined under the requirements of section 38 of the *Act*.

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 24, 2011.

Residential Tenancy Branch