



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPL, MNR, MNSD and FF

Introduction

This application was brought by the landlord on November 8, 2011 seeking an Order of Possession pursuant to a Notice to End Tenancy for landlord use dated September 29, 2011 and a subsequent Notice to End Tenancy for unpaid rent dated October 18, 2011. The landlord also sought a Monetary Order for unpaid rent, authorization to retain the security deposit in set off against the balance owed and recovery of the filing fee for this proceeding.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession, and if so, the effective date, and is the landlord entitled to a Monetary Order for unpaid rent, authorization to retain the security deposit in set off and recovery of the filing fee?

Background and Evidence

This tenancy began in January 1, 2010 according to the tenant, and on March 1, 2011 according to the landlord. Rent is \$2,300 per month and the landlord holds a security deposit of \$1,150 paid before the tenancy commenced.

During the hearing, the landlord submitted two Notices to End Tenancy. The first was for landlord use and given on the grounds that the landlord had sold the rental unit, conditions had been satisfied and the purchaser had requested the notice be served. The notice set an end of tenancy date of November 30, 2011.

The second notice was served on October 18, 2011 after the tenant had stopped payment on the post dated cheque for the October 2011 and set an end of tenancy date of October 28, 2011.

According to the tenant, the rental property was in deplorable condition at the beginning of the tenancy and she and the landlord had agreed that the tenant would be relieved of the rent for the last two weeks of the tenancy if the tenant bought and applied paint and did extensive cleaning and refuse removal.

As the notice to end for landlord use permitted the tenant free rent for November, she did not pay the October rent as she believed the security deposit and the two free weeks rent would cover it. She believed the security deposit was available to cover rent as she had been told that the rental unit was to be demolished and there could be no claims in damages.

The landlord stated there had been no agreement at the beginning of the tenancy to provide two weeks free rent at the end of the tenancy for the cleaning and painting.

The tenant gave evidence that she has already moved, that her daughter will be out of the rental unit by the end of the month and she agrees that the landlord is entitled to the Order of Possession effective November 30, 2100.

Analysis

The parties understand that the tow-month notice to end the tenancy for landlord use provides for the tenant to receive the equivalent of one-month's rent which accounts for November's rent.

The tenant has not contested the requested Order of Possession and the landlord has agreed on an end of tenancy date of November 30, 2011.

The tenant has already expressed in writing, and confirmed during the hearing, her intention that the landlord should retain the security deposit in set off against unpaid rent.

Therefore, the only issue that remains unresolved is the two weeks free rent the tenant claims she was promised for the work performed at the beginning of the tenancy. As the landlord does not concur such an agreement was made, and as the tenant has no documentary evidence of such an agreement, I find that the tenant must pay the \$1,150 rent for the two weeks in question.

As the application has succeeded, 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.

In addition to authorization to retain the \$1,150 security deposit in set off against the balance owed, the landlord's copy of this decision is also accompanied by a Monetary Order for \$1,200 (\$1,150 rent plus \$50 filing fee). If the award is not paid, the landlord may file the Order with the Provincial Court of British Columbia and enforce it as an order of the 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 25, 2011.

Residential Tenancy Branch