



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, OPB, MNR, MNSD and FF
Tenant: MT, CNR, MNDC, RP, ERP, RR and FF

Introduction

These applications were brought by both the landlord and the tenant.

By application of November 15, 2011, the landlord seeks an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served on November 4, 2011 and an Order of Possession for breach of contract, although there is no related Notice to End Tenancy for cause. The landlord also seeks a Monetary Order for unpaid rent and recovery of the filing fee for this proceeding and authorization to retain the security and pet damage deposits in set off against the balance owed.

By application of November 14, 2011, the tenant seeks an extension of the time permitted to make application to have the Notice to End Tenancy set aside, a Monetary Order for loss or damage or loss under the legislation or rental agreement, orders for repairs and emergency repairs, a rent reduction and recovery of the filing fee for this proceeding.

Item 2.3 under the rules of procedure provides that:

“If, in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.”

On reading the evidence submissions of both parties and on hearing them articulate the matters in dispute, I find that the Notice to End Tenancy for unpaid rent must take precedence for the present hearing.

Other issues include the landlord's claim for return of a rent reduction early in the tenancy is co-mingled with an agreement for repairs, painting, etc. contested by the

tenant. Similarly, the landlord's claim for restoration of the rental unit to its original state is premature as the tenancy has yet ended.

In addition, some of the tenant's claims for repairs and rent reduction may be moot if the tenancy is to end and others are co-mingled with their agreement for improvements to the rental building.

Therefore, all matters other than the Notice to End Tenancy of November 4, 2011 and its direct implications are dismissed with leave to reapply for both parties.

Issue(s) to be Decided

This matter now requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order for recovery his the filing fee and authorization to retain the security and pet damage deposits in set off against the balance owed.

Background and Evidence

According to the rental agreement, this tenancy began on August 1, 2011 although the tenant notes she did not move in until near the end of the month. The agreement was for a one year fixed term, although the landlord's written submissions included a letter to the tenant stating that he would not hold her to the fixed term if she chose to leave.

Rent is \$1,650 per month plus utilities and the landlord holds security and pet damage deposits of \$825 each paid in July 2011.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of November 4, 2011 was served when the tenant had failed to pay the rent due on November 1, 2011. The tenant concurred that none of the November 2011 rent had been paid at the time of the hearing on November 29, 2011.

The tenant made explanation that she had not paid the rent due to the need for repairs in the rental unit. The landlord offered to continue the tenancy if the tenant paid the rent for November and December 2011, but the tenant declined.

The tenant submitted late evidence pertaining to the repair issues that were not considered in the present hearing.

Analysis

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

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. Tenants may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenant did not pay the rent within five days of receiving the notice. The tenant did make application to dispute it the notice but it was made five days late. That aside, I find that the landlord's application has succeeded on its merits.

Therefore, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenant.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent, filing fee and, pursuant to section 72(2)(b) of the *Act*, I authorize the landlord to retain the security and pet damage deposits in set off against the balance owed.

Thus, I find that the tenant owes the landlord an amount calculated as follows:

Rent for November 2011	\$1,650.00
Sub total	\$1,700
Less retained security deposit (No interest due)	- 625.00
Less retained pet damage deposit (No interest due)	- <u>625.00</u>
TOTAL	\$ 50.00

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 two days from service of it on the tenant.

In addition to authorization to retain the security and pet damage deposits in set off against the balance owed, the landlord's copy of this decision is also accompanied by a Monetary Order for \$50.00 for service on the tenant.

The remaining portions of both applications are dismissed with leave to reapply and the parties remain at liberty to make application for any further damages as may be ascertained at the conclusion of the tenancy.

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 29, 2011.

Residential Tenancy Branch