



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for an Order of Possession, to recover the filing fee for this proceeding and to keep the Tenants' security deposit.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery November 1, 2011. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants absence.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Is the Landlord entitled to retain the Tenants' security deposit?

Background and Evidence

This tenancy started on February 1, 2011 as a month to month tenancy. Rent is \$1,350.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$600.00 in January, 2011.

The Landlord said she issued a 1 Month Notice to End Tenancy for Cause dated September 30, 2011, on September 30, 2011 with an effective vacancy date of October 31, 2011. The Landlord continued to say she issued the Notice because the Tenants have paid the rent late for March, April, May, August, September and October, 2011. The Landlord continued to say she asked the Tenants' to pay the rent on time on the 1st of each month every time they were late with the rent payment, but they did not. The Landlord said the Tenants were late paying the rent 6 out of the 9 months they have lived in the rental unit.

The Landlord continued to say she issued the Notice to End Tenancy for a number of other reasons as well, which included additional occupants in the unit, complaints by other tenants due to the smell of marijuana in the rental complex and damage to the Landlords property. The Landlord continued to say the Tenants have allowed another male to live in the unit as well as a girl friend and her 2 children to live in the unit part

time. In addition the Landlord said the Tenants smoke marijuana and the smell goes into the other units in the rental complex and one of the other tenants has complained. The Landlord said the police have been called out to the rental unit. The Landlord continued to say she has asked the Tenants to stop smoking marijuana in the unit verbally and by letter, but it has had no effect on the Tenants behaviour.

The Landlord also said the Tenant's girlfriend ran into the gate on the entrance of the property so the Landlord is requesting to retain the Tenants' security deposit to replace the gate. The Landlord said the new gate cost \$405.44, she hired a welder to work on the old gate at a cost of \$80.00 and the cost to hang the new gate is estimated at \$100.00. The Landlord said the new gate will cost more than \$550.00.

Analysis

Section 47 of the Act says a landlord may end a tenancy by giving a notice to end tenancy if the Tenant is repeatedly late with the rent payment, if the tenant or occupants unreasonable disturbs the landlord or seriously jeopardizes the landlord's property.

The Landlord provided affirmed testimony that the Tenants have been late with the rent payments for 6 of the 9 months of this tenancy. The Residential Tenancy Policy guideline # 38 says if a Tenant is repeatedly late with the rent more than 3 times the Landlord has grounds to end the tenancy. I accept the Landlord's affirmed testimony and I find that the Landlord has established grounds to receive an Order of Possession.

Section 47(4) of the Act states that **within 10 days of receiving** a Notice to End Tenancy for Cause, a Tenant may apply for dispute resolution. If the Tenant fails to do this, then under section 47(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy on the day it was served, or on September 30, 2011. Consequently, the Tenants would have had to apply to dispute the Notice by October 10, 2011.

I find that the Tenant has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I further find that the Landlord has established grounds to retain the Tenants' security deposit of \$600.00 for damage to the Landlords' property caused by a person allowed on the property by the Tenants.

I also find that as the Landlords were successful in this matter she is entitled to recover the filing fee of \$50.00 for this proceeding from the Tenants. I order the Landlords to retain the full \$600.00 of the Tenant's security deposit as full payment for the damage to the Landlords' gate (\$550.00) and the filing fee for this proceeding of \$50.00.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia.

I order the Landlord to retain the Tenants' security deposit of \$600.00 as full settlement of the Landlords' monetary claims.

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 22, 2011.

Residential Tenancy Branch