



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

Both parties agree that this month to month tenancy started on July 15, 2011. The parties had a verbal agreement in place concerning the tenancy for this unit. The landlord testifies that the tenants agreed to pay \$1,400.00 per month however this was reduced to \$1,200.00 per month for the first three months as the tenants had agreed to do cleaning and repairs at the unit. The rent was due to go back to \$1,400.00 on October 01, 2011. The landlord also states the tenants paid a security deposit of \$700.00 on June 28, 2011. The tenants dispute this and state the rent was agreed to be \$1,300.00 with a three month reduction of \$100.00 for cleaning and repairs. The tenants testify that they paid \$650.00 for the security deposit.

The landlord testifies the tenant paid \$600.00 for half of rent for July, 2011; the landlord claims the tenant only paid \$600.00 on August 01, 2011 and failed to pay the rent of \$1,200.00 on September 01, 2011. The landlord states the tenant informed her that the other occupant was waiting for her student loan to be paid then they would be able to pay the outstanding rent. The landlord testifies the tenant failed to pay rent of \$1,400.00 for October, 2011. The landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent in person on October 24, 2011. This Notice states the tenants owe rent of \$3,500.00 due on October 01, 2011. The landlord states this amount is an error. The tenants actually owe \$3,200.00. The Notice has an effective date of November 03, 2011.

The landlord testifies that the tenant failed to pay rent for November of \$1,400.00 at this point the landlord agrees the tenant owes \$4,600.00. The landlord testifies the tenant paid \$3,900.00 on November 21, 2011 and this was accepted by the landlord and the receipt was marked for use and occupancy only and was signed by the tenant's wife. Since that payment was made the tenants failed to move from the rental unit and failed to pay all the rent for December, 2011. The landlord testifies the tenant now owes the sum of \$2,100.00 in unpaid rent.

The landlord seeks a Monetary Order to recover the unpaid rent and seeks an Order to keep the security deposit of \$700.00 against the unpaid rent. The landlord also seeks an

Order of Possession to take effect as soon as possible. The landlord also seeks to recover the \$50.00 filing fee from the tenant for the cost of filing this application.

The tenant dispute the landlord's claims. The tenant agrees that they did pay \$600.00 for July, 2011 but state at the time this was paid they also paid \$650.00 for the security deposit and \$1,200.00 for August rent. The tenant states as they knew they would be waiting for a student loan to come through they wanted to pay August rent in advance. The tenant testifies that they only paid \$600.00 for Septembers rent but did inform the landlord that they were waiting for the student loan to come in.

The tenant agrees they did not pay rent for October, 2011 but state this amount should only be \$1,300.00. The tenant testifies that they did not pay rent for November, 2011 on the day it was due but when the student loan came in they paid \$3,900.00 on November 21, 2011. The tenant states she sent an e-mail to the landlord concerning this payment and informed the landlord in this e-mail that this money was for November, December and January rent and that if the landlord accepted this money that was the last that they talk about it. The tenant states the landlord and the tenants wife came to an agreement that the \$3,900.00 would cover rent for November, December and January in order to secure the residence through the holiday session. The tenant states this was their offer to the landlord however the landlord has gone back on that arrangement.

The landlord testifies that this was an offer the tenants put to her in an e-mail but the landlord states she did not agree to it and that is why the landlord accepted the rent money of \$3,900.00 and marked the receipt for use and occupancy only as she had no intention of reinstating the tenancy under the tenant's terms.

The landlord testifies she has received a letter from the city of Vancouver and compliant letters from neighbours concerning the mess in the front and back yards at the rental unit. The landlord states the City informed her that if the garbage was not cleaned up and removed the landlord would be charged for this work on her City taxes. The landlord has not indicated a monetary claim for this work

The tenants testify that when they moved into the unit there was garbage left by the person renting the garage. The tenants state they were in the process of cleaning up the garbage. The tenants testify they have received nothing from the landlord concerning this and most of the garbage has now been cleared away.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the tenants to Section 26 of the Act which states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The parties agree that rent was due on the first day of each month and they agree that rent for July, 2011 was \$600.00 and rent for August and September was \$1,200.00. The tenants disagree that the rent was \$1,400.00 and argue it was only \$1,300.00 from October 01, 2011. By their nature, disputed verbal terms are not clear and are often impossible for a third party to interpret. As the landlord would have the burden of proof in this matter that rent was \$1,400.00 from October 01, 2011 it is my decision that the landlord has not met the burden of proof therefore it is my decision that the rent from October 01, 2011 was \$1,300.00.

Taking this into account I find the tenants agree they did owe some rent but argue they had an agreement with the landlord that if the landlord accepted the tenant's payment of \$3,900.00 on November 21, 2011 the remainder of the rent arrears would not be mentioned again. The landlord argues that she did not enter into an agreement of this sort with the tenant and they have failed to pay the rent arrears. As the tenant has provided no evidence to support this alleged agreement with the landlord it is my decision that the tenants do owe rent.

The parties contradict each others evidence as to how much rent is owed. I have considered both the verbal and written evidence presented at the hearing. The tenant

testified that they paid \$600.00 for July and \$650 for the security deposit and \$1,200.00 for August all at the start of the tenancy in July. However the tenant's written documentation presented for the hearing states they paid the security deposit of \$650.00, rent for July of \$600.00 at the start of the tenancy and \$600.00 for August at the beginning of August. As the tenant's verbal and written evidence contradicts itself I find the landlords evidence more credible in this matter. Consequently, it is my decision that the tenants owed \$600.00 for August, 2011, \$1,200.00 for September, 2011, \$1,300.00 for October, 2011, \$1,300.00 for November, 2011 and \$1,300.00 for December, 2011. The tenants paid \$3,900.00 on November 21, 2011 this leaves an unpaid balance of rent of **1,800.00**.

The Parties also contradict each other regarding the amount of security deposit that was paid at the start of the tenancy. As the landlord did not provide a written tenancy agreement or receipt to the tenant showing the actual amount paid in order to meet the burden of proof I am not able to determine that the tenants did pay \$700.00 for a security deposit and as I have found the rent to be \$1,300.00 I have determined that the security deposit was half the monthly rent at \$650.00. I therefore Order the landlord to keep the tenants security deposit of \$650.00 which will be offset against the unpaid rent.

As the landlord has been partially successful with this claim I find the landlord is entitled to recover the \$50.00 filing fee from the tenant. A Monetary Order has been issued to the landlord for the following amount:

Rent arrears	\$1,800.00
Less security deposit	(-\$650.00)
Subtotal	\$1,150.00
Plus filing fee	\$50.00
Total amount due to the landlord	\$1,200.00

I further find the tenant did not pay the outstanding rent within five days of receiving the 10 Day Notice to End Tenancy; payment of the rent within five days of receiving the Notice would have served to automatically cancel the Notice. In this instance the debt was not paid within five days but a portion was paid on November 21, 2011 However, payment was accepted by the landlord for use and occupancy only. Therefore the Ten-Day Notice still

remains in effect. I find that the Notice for unpaid rent was supported under the *Act* and section 46 of the *Act* was fully met. Based on the testimony and evidence of both parties, I find that the landlord is entitled to an Order of Possession.

With regards to the landlord claim for the tenants to clear up garbage as directed by the City of Vancouver; I find in this matter the landlord has not informed the tenants in writing of the complaint from the city and requested that they remove the garbage outside the rental unit. Consequently, I find this section of the landlords claim is premature and is dismissed with leave to reapply in the event the garbage has not been removed after written requests to do so have been served upon the tenants.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,200.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order 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: December 14, 2011.

Residential Tenancy Branch