



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started approximately 4 years ago. Rent is \$665.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$175.00 at the beginning of the tenancy.

The Landlord's agent said the Tenant did not pay rent for November 2011 in full when it was due and as a result, on November 5, 2011 the Landlord's agent served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 5, 2011. The Tenant said it was put under the rental unit door. The Landlord's agent said the Tenant has not paid the rent arrears for November 2011 of \$330.00 and has not paid rent for December 2011.

The Tenant claimed that she was assaulted by her roommate in mid-November 2011 and was advised by the building manager that she should move out because her roommate had resided there longer. The building manager denied this and claimed that the Tenant approached him with the overdue rent after the effective date of the Notice and as a result, he refused to accept her payment and told her she would have to move out. The Tenant said she moved out on November 26, 2011 because the building manager told her that the Bailiff would come to remove her. The Tenant said she left some of her personal belongings in the rental unit and wishes to retrieve them.

Analysis

Section 46(4) of the Act states that within 5 days of receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or (if they believe the amount is not owed) apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit at that time.

I did not find the Tenant's evidence regarding the service of the 10 day Notice reliable. She claimed that she moved out in mid-November 2011 (for a couple of days) following an assault on her by her roommate. The Tenant said it was only when she returned to the rental unit that she found the 10 Day Notice and she immediately took steps to raise the funds. However, the Tenant also claimed that the building manager told her that she could no longer reside with her roommate and would have to move out. I find the building manager's version of events is more likely in that the Tenant was served with the 10 day Notice on November 5, 2011 and that when she later sought to pay the rent, the building manager advised her she would have to move because the 5 days for paying the overdue rent had expired.

As a result, I find that the Tenant was served with a 10 day Notice on November 5, 2011. The Landlord claimed that the Notice was served on the Tenant in person. Even if it was put under the rental unit door as the Tenant claimed, she was deemed pursuant to s. 90 of the Act to have received the 10 Day Notice 3 days later or on November 8, 2011. Consequently, the Tenant would have had to pay the amount on the Notice or no later than November 13th or apply to dispute that amount no later than November 14, 2011 (given that the 13th fell on a Sunday). The Tenant claimed that she offered to pay the overdue rent on November 15th or 16th, 2011 which was past the 5 days granted on the 10 Day Notice.

Consequently, I find that the Tenant did not pay the overdue rent within the 5 days granted under s. 46(4) of the Act and did not apply for dispute resolution. I find that the Tenant did not advise the Landlord that she was vacating the rental unit, she did not remove all of her belongings and indicated an intention to return to remove her belongings therefore I conclude that the Tenant did not abandon the rental unit and the tenancy has not ended. As a result, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant. ***This means that the Landlord may not deny the Tenant the right to access and occupy the rental unit until 2 days after she is served (or deemed to have been served under s. 90) with the Order of Possession .***

I also find that the Landlord is entitled to recover unpaid rent of \$330.00 for November 2011. RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that a Landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages to which a Landlord is entitled is an amount sufficient to compensate the

Landlord for any loss of rent up to the earliest time the Tenant could have legally ended the tenancy. Under section 45 of the Act, a Tenant of a month-to-month tenancy must give one full, calendar month's notice they are ending the tenancy. Consequently, given that the Tenant is deemed to have received the 10 Day Notice on November 8, 2011, the earliest the Tenant could have ended the tenancy would have been December 31, 2011. As a result, the Landlord is entitled to recover loss of rental income for December 2011 in the amount of \$665.00.

The Landlord is entitled pursuant to s. 72 of the Act to recover the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit plus accrued interest in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Rent arrears (Dec. 1-7):	\$150.16
Loss of rental income (Dec 8-31):	\$514.84
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,045.00
Less: Security Deposit:	(\$175.00)
Accrued Interest:	<u>(\$2.85)</u>
Balance Owing:	\$867.15

RTB Policy Guideline #13 says at p. 2 that "in the absence of clear evidence of a tenancy in common, there is a presumption in law of a joint tenancy." I find that there is no clear evidence that the Tenant and her roommate were tenants in common and therefore I conclude that they were joint tenants who are jointly responsible for paying the rent.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$867.15** have been issued to the Landlord. A copy of the Orders must be served on the Tenant; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 07, 2011.

Residential Tenancy Branch