

DECISION

Dispute Codes:

Tenant's application: CNR; FF

Landlord's application: OPR; MNR; FF

Introduction

This Hearing was convened to consider cross applications. The Tenant seeks to cancel a Notice to End Tenancy for Unpaid Rent issued November 15, 2011 (the "Notice"); and to recover the cost of the filing fee from the Landlord.

The Landlord seeks an Order of Possession; a Monetary Order for unpaid rent and loss of revenue; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

It was established that the Tenant served the Landlord with her Notice of Hearing documents by registered mail, sent November 24, 2011, and the Landlord served the Tenant with his Notice of Hearing documents by registered mail, sent November 23, 2011

Issues to be Decided

- Should the Notice be upheld or cancelled?
- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent for the month of November and loss of revenue for the month of December?

Background and Evidence

Monthly rent is \$550.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$275.00 at the beginning of the tenancy.

There was a Dispute Resolution Hearing with respect to this tenancy on November 8, 2011, and a Decision issued on November 8, 2011, with respect to that Hearing. A copy of the November 8 Decision was provided in evidence.

The Landlord testified that he had issued a Notice to End Tenancy for Landlord's Use on September 30, 2011, and that in compensation pursuant to the provisions of Section 51 of the Act, he had returned the Tenant's November rent cheque on November 3, 2011. The Landlord stated that he wrote to the Tenant explaining why he was returning

her rent cheque. A copy of the Landlord's letter dated November 3, 2011, was provided in evidence.

The Landlord testified that at the Hearing on November 8, 2011, the parties agreed that the Tenant would pay rent for the month of November, would not have to pay rent for the month of January, 2012, and that the tenancy would end on January 31, 2012. Based on this agreement, the Landlord stated that he was expecting rent to be paid for November, but the Tenant did not provide a rent cheque for November after their agreement and therefore he issued the Notice. The Landlord testified that he served the Tenant with the Notice on November 15, 2011, by handing the Notice to the Tenant.

The Tenant testified that the Landlord posted the Notice to her door, and that she was not certain when she discovered it. The Tenant questioned the validity of the Notice because the copies provided in evidence were different.

Both parties provided a copy of the Notice in their documentary evidence. The copy provided by the Tenant indicates "Because you have failed to pay rent in the amount of \$550.00 that was due on 01 11 2011". The copy provided by the Landlord does not indicate the date that rent was due. The Landlord stated that he had printed off two blank copies of the form of the notice from his computer and had handwritten the contents on each of the forms. He stated that he had not filled in his copy with the date and that it was an oversight.

The Tenant testified that she got legal advice and her lawyer told her she didn't have to pay rent for November because she had already paid it and it had been returned to her. The Tenant testified that she has not paid rent for December because she was waiting for the outcome of this Hearing.

The Tenant testified that she did not agree to pay November's rent at the November 8 Hearing. She stated that she did not receive a copy of the Decision from the Residential Tenancy Branch and that she had to go to the Branch and pick it up herself. The Tenant stated that she did not know that she could request a clarification or correction to the Decision.

The Landlord indicated on his Application for Dispute Resolution that the Tenant had been awarded \$385.00 in the November 8, 2011, decision, which could be deducted from future rent. No monetary order was issued to the Tenant.

Analysis

I accept the Landlord's explanation for the reason that the parties' copies of the Notice look different. In any event, the Tenant is applying to cancel the Notice that she provided in evidence, which is fully completed.

The Decision of November 8 states, in part:

“During the course of the hearing, the parties reached an agreement to settle the status of the tenancy, and that I record their settlement and provide each party with the corresponding means to perfect their agreement. The parties agreed to the following conditions:

1. The parties agree that tenant will pay the landlord the outstanding rent owed to them for **November 2011**, forthwith.
2. The landlord and the tenant agree that the tenancy will continue **to January 31, 2012**, at which time the tenant agrees they will vacate the rental unit subject to an **Order of Possession** for the landlord, **and the tenancy will end**.
3. The landlord and tenant agree that there **will not be any rent payable** for the month of **January 2012**. “

When asked why she did not pay rent for the month of November, the Tenant gave conflicting testimony at the Hearing. She testified that she did not agree to pay rent for November in the November 8th Hearing. She also testified that she was given legal advice that she did not have to pay November rent at all because she had paid it on November 1st and it had been returned to her on November 3rd.

I find, on the balance of probabilities, that the parties did come to the terms of agreement as noted in the November 8, 2011, decision and that the Tenant had agreed to pay November rent forthwith. Forthwith is a word a term found in contracts, court orders, and statutes, meaning as soon as it can be reasonably done. It implies immediacy, with no excuses for delay. The Landlord waited one week for payment of the rent as agreed by the Tenant and then issued the Notice.

I find that the Notice is a valid notice. The Tenant's application to cancel the Notice is dismissed. I find that the Tenant is not entitled to recover the cost of the filing fee from the Landlord.

The parties gave conflicting testimony with respect to how the Notice was served. Section 90 of the Act provides that a document posted on a door is deemed to be served 3 days after posting. I make no finding with respect to the manner in which the Notice was served, as the effective date has past and this tenancy is over. I find that the Landlord is entitled to an Order of Possession. The Tenant is overholding and I find that the Landlord is entitled to loss of revenue for the month of December, 2011.

The Landlord has been successful in his application and is entitled to recover the cost of the filing fee from the Tenant.

On his Application for Dispute Resolution, the Landlord did not seek to apply the security deposit towards partial satisfaction of his monetary award. When asked at the Hearing, he stated that he did not wish to do so. Therefore, the security deposit remains and must be applied in accordance with the provisions of the Act.

The Landlord has established a monetary award, calculated as follows:

Unpaid rent for November, 2011	\$550.00
Loss of revenue for December, 2011	\$550.00
Recovery of the filing fee	\$50.00
Less set-off of Tenant's award from November 8	<u>-\$385.00</u>
TOTAL	\$765.00

Conclusion

The Tenant's application is dismissed in its entirety.

I hereby provide the Landlord an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord a Monetary Order in the amount of **\$765.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) and enforced as an Order of that Court.

The security deposit remains with the Landlord and must be applied in accordance with the provisions of the Act.

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 08, 2011.

Residential Tenancy Branch