

DECISION

Dispute Codes:

Tenant's application: CNR; MNDC

Landlord's application: OPR; MNR; MNSD; FF

Introduction

This Hearing was convened to consider cross applications. The Tenant seeks to cancel a Notice to End Tenancy for Unpaid Rent and compensation for damage or loss under the Act, regulation or tenancy agreement.

The Landlord seeks an Order of Possession; a Monetary Order for unpaid rent; to retain the security deposit in partial satisfaction of the Landlord's monetary award; and to recover the cost of the filing fee from the Tenant.

The Landlord's agent and the Tenant gave affirmed testimony at the Hearing.

Preliminary Matters

Section 2.3 of the Residential Tenancy Branch Rules of Procedure provides that , if deemed appropriate, I may dismiss unrelated disputes contained in a single application with or without leave to reapply. I advised the parties at the outset of the Hearing that the Tenant's application for compensation was not sufficiently related to his application to cancel the Notice to End Tenancy. The Tenant stated that he wished to deal with his application to cancel the Notice to End Tenancy, and therefore the remainder of his application was dismissed with leave to reapply.

Issues to be Decided

- Should the Notice to End Tenancy for Unpaid Rent issued December 2, 2011 (the "Notice") be cancelled or upheld?
- If the Notice is upheld, is the Landlord entitled to an Order of Possession and Monetary Order for unpaid rent?

Background and Evidence

This tenancy began on October 1, 2011. The Landlord provided a copy of the tenancy

agreement in evidence. The rental unit is the basement suite of a house. The Landlord resides on the main floor of the house. The Tenant paid a security deposit in the amount of \$400.00 at the beginning of the tenancy.

The Landlord's agent testified that the Landlord and Tenant agreed that monthly rent was \$750.00 at the beginning of the tenancy, but that another unauthorized occupant moved in with the Tenant and his son, so the Landlord increased the rent to \$800.00 per month. The Landlord's agent testified that he had discussions with the Tenant on November 5, 2011 and agreed to return the rent to \$750.00 per month.

The Tenant testified that there was no other occupant other than himself and his son living in the rental unit. The Tenant testified that he did not pay any rent for December after he received the Notice because the Notice indicated that he owed \$800.00, and he only owed \$750.00.

The Landlord's agent testified that the Tenant still owed rent in the amount of \$100.00 for the month of November. The Tenant denied that he owed any rent except the rent for December, 2011.

The Landlord's agent testified that the Landlord served the Tenant with the Notice at 9:00 p.m. on December 2, 2011, by handing the Notice to the Tenant at the rental unit. The Tenant agreed that he had received the Notice on that day.

Analysis

Based on the testimony and documentary evidence provided, I find that monthly rent is \$750.00, due on the first day of each month. The Tenant did not pay rent for the month of December and therefore I dismiss his application to cancel the Notice.

I accept that the Notice was served on December 2, 2011. Therefore, I find that the tenancy ended 10 days afterwards, on December 12, 2011. I find that the Tenant is overholding and that the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the Tenant.

The Landlord seeks to recover unpaid rent for December and \$100.00 in unpaid rent for November, 2011. The Tenant testified that he paid full rent for November. The onus is on the Landlord to provide sufficient proof that the Tenant did not pay full rent for November (for example a copy of the receipt for November's rent). The Landlord did not provide sufficient documentary evidence to prove that the Tenant did not pay full rent for November and therefore I find that the Landlord has established a monetary award in the amount of \$750.00 for unpaid rent.

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit in partial satisfaction of his monetary award.

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

I hereby provide the Landlord a Monetary Order, calculated as follows:

Unpaid rent for December, 2011	\$750.00
Recovery of filing fee	\$50.00
Less security deposit held by Landlord	<u>-\$400.00</u>
Total	\$400.00

Conclusion

The Tenant's application to cancel the Notice to End Tenancy issued December 2, 2011 is dismissed. The remainder of the Tenant's application is dismissed with leave to reapply.

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 **\$400.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 21, 2011.

Residential Tenancy Branch