



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPR, OPB, MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord, his agent, the tenant and third unidentified party with the tenant.

The landlord's agent noted at the start of the hearing that the landlord only wanted to concentrate on ending the tenancy for the Notice issued November 20, 2011 and the unpaid rent. As such, I amend the landlord's Application to deal only with the order of possession for cause and for the monetary order for unpaid rent and the filing fee for this Application.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause; to a monetary order for unpaid rent and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on September 25, 2011 for a month to month tenancy beginning on October 1, 2011 for a monthly rent of \$1,200.00 due on the 1st of each month and a security deposit of \$600.00; and
- A copy of a 1 Month Notice to End Tenancy for Cause dated November 20, 2011 with an effective vacancy date of November 20, 2011 citing the tenant is repeatedly late paying rent; that the tenant has allowed an unreasonable number of occupants in the unit/site; and that a security deposit or pet damage deposit was not paid within 30 days as required by the tenancy agreement. The notice states the tenant had 10 days to file an Application for Dispute Resolution if the tenant wished to dispute the Notice.

The landlord submits he served the 1 Month Notice to End Tenancy by putting it in the tenant's mailbox on November 20, 2011 and that this service was witnessed by a third party.

The tenant testified, at first that she did not receive the landlord's Notice to End Tenancy until she was served with the landlord's Application for Dispute Resolution. The landlord testified he served the tenant with his Application on December 28, 2011 by registered mail. The tenant stated she could not remember when she received the Application for Dispute Resolution.

When questioned by me, the tenant stated she received the landlord's hearing package not before New Year's but sometime after New Years, but she could not remember specifically but that she only had a week to prepare. The tracking sheet provided into evidence for the registered mail showed the tenant signed for the package on December 29, 2011.

Later the tenant testified the landlord served her with the Notice to End Tenancy 3 days before Christmas. When asked why the tenant did not dispute the Notice once she did receive it, whether it was on November 20, 2011; December 23, 2011 or December 29, 2011, she testified that she call the Residential Tenancy Branch who told her that the landlord had to issue a new notice, although she was not clear on why this would have been the case.

The tenant testified that she did not pay rent for December 2011 and January 2012 because the landlords had arranged for her to move elsewhere and she was not allowed to move there, because the new landlord was going to have his brother move in. The tenant stated that she has the rent available.

Analysis

Section 47(1) of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- b) The tenant is repeatedly late paying rent;
- c) There are an unreasonable number of occupants in a rental unit;
- d) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - iii. Put the landlord's property at significant risk;
- e) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. Has caused or is likely to cause damage to the landlord's property,
 - ii. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

- iii. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- f) The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property;
- g) The tenant does not repair damage to the rental unit or other residential property, as required under section 32(3), within a reasonable time;
- h) The tenant
 - i. Has failed to comply with a material term, and
 - ii. Has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
- i) The tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34;
- j) The tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;
- k) The rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;
- l) The tenant has not complied with an order of the director within 30 days of the later of the following dates:
 - i. The date the tenant receives the order;
 - ii. The date specified in the order for the tenant to comply with the order.

While the Notice indicated the effective date of the Notice was the same day it was issued, Section 53 of the Act allows for the effective date is deemed to have been changed to the earliest possible effective date. As the 1 Month Notice was issued to the tenant on November 20, 2011 I find the earliest date the Notice could be effective is December 31, 2011.

Section 47(5) states that if a tenant who has received such a notice does not make an Application for Dispute Resolution the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

From the testimony of both parties I accept the landlord's testimony that the tenant was served with the Notice on November 20, 2011 for the following reasons:

1. The service was witnessed by a third party, who provided this testimony;
2. The tenant did not pay rent starting on December 1, 2011, because, she says the landlord had found her another place – so clearly there was knowledge at this time that the landlord wanted to end the tenancy;
3. The tenant provided inconsistent testimony as to when she says she first received the Notice. First she stated she did not receive a copy of the Notice until she got served with notice of this hearing, then she stated she got a copy on December 22, 2011.

Even if I were to accept the tenant's testimony that she received the Notice for the first time on December 22, 2011 the Notice itself tells her that if she wishes to dispute the notice she must file an Application for Dispute Resolution within 10 days of receipt of the notice.

As the tenant did not file an Application for Dispute Resolution to dispute the Notice, I find the tenant is deemed to have accepted that the tenancy ended on December 31, 2011. As such, the tenant must vacate the rental unit.

Further from the testimony of both the tenant and the landlord, I accept the tenant has not paid rent for the months of December 2011 and January 2012.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,450.00** comprised of \$2,400.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: January 13, 2012.

Residential Tenancy Branch