



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MND, FF

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent and damage to the unit; to keep the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of an apartment in a multi unit complex. The background to this dispute is as follows:

A.S., who is the applicant landlord, was on a fixed term tenancy ending December 31st, 2011. He moved out in November 2011 and sub-let the unit to the tenant. A.S. stated

that at the end of the fixed term, he did not give notice to his landlord, who is also the resident manager, and that therefore the tenancy continued month-to-month. There was no written tenancy agreement between A.S. and the sub-letting tenant. The rent was \$1025.00 per month and the tenant paid a security deposit of \$500.00.

K.S. testified that the tenant did not pay rent for January 2012 and that on January 2nd, 2012 he posted a 10 Day Notice to End Tenancy on the tenant's door. He stated that the tenant gave the resident manager a monetary order that could not be endorsed because it was not written in either his name or the resident manager's. K.S. said that A.S. paid the rent, that he left several unanswered messages in an attempt to contact the tenant, and that the tenant eventually paid him on January 21st, 2012.

A.S. testified that the tenant left personal items in the common area of the complex, and that foul odours started to emanate from the unit. He said that he gave the tenant a 24 hour notice and that he entered the unit on January 5th, 2012. A.S. provided 16 photographs to reveal the condition of the unit in support of his claim for damages and loss. The photographs showed that the unit was in an abysmal condition and in need of extensive cleaning, due to a significant amount of personal items, garbage that included human waste, and drug paraphernalia strewn throughout the rooms.

A.S. stated that he served a further 24 hour notice on the tenant and that he undertook cleaning and repairs on January 10th, 2012. A.S and K.S. submitted receipts and made a monetary claim as follows:

- Estimate to repair flooring:	\$ 840.00 (not completed yet)
- Cleaning services:	\$ 100.00
	\$ 54.00
- A.S. work breakdown:	\$ 950.00
- New deadbolt:	\$ 27.99
- Cleaning and repair supplies:	\$ 83.03
	\$ 3.80

	\$ 24.10
	\$ 32.89
- Sub-Total:	\$2115.81

K.S. stated that A.S. works for a local disposal company, and therefore he did not have to pay for a portion of the work performed; however the cost of that work was estimated at \$1800.00.

The tenant testified that his landlord is the resident manager since the applicant landlord's lease ended at the end of December 2011. He said that according to the verbal agreement with the sub-letting landlord and the resident manager, he was to take over the tenancy after December 31st, and that he sent a monetary order for January 2012 rent to the resident manager.

Concerning the condition of the unit, he did not question the landlord's evidence; he stated that he had been to the hospital and could not address the problem at that time.

Analysis

The parties' testimony concerning the sub-let agreement was not supported by documentary evidence. The parties did not enter into a written agreement; however the regulation states that a fixed term that does not require the tenant to vacate at the end of the tenancy becomes a month to month tenancy until the tenant gives notice to end the tenancy. The tenant received a 10 Day Notice to End Tenancy; he wrote a money order in the wrong name that neither the sub-letting landlord nor the resident manager could endorse. The sub-letting landlord stated that he had trouble contacting the tenant and that he was not able to have rent paid until January 21st, 2012. I heard no evidence from the tenant of any attempts to return messages, contact either the sub-letting landlord or the resident manager in order to clarify the problem once he received the Notice to End Tenancy. I find that A.S. was the tenant's landlord in January 2012; even

if that was not the tenant's understanding, the tenant was not diligent to deal with the notice in a timely manner.

Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for non-payment of rent does not pay the rent or makes an application for dispute resolution within 5 days, 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. The tenant in this matter has not filed an application for dispute resolution. The landlord's Notice to End Tenancy is valid and on that basis the landlord is entitled to an order of possession.

Concerning the damages, the tenant did not dispute the state of the unit. Section 7(2) of the *Act* states in part that a landlord who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss. In that context, what it would have cost is immaterial and I will only consider the landlord's actual expenses.

Regarding the estimate for flooring, the landlord presented no evidence concerning the condition of the floor at the start of the tenancy, or specified in his evidence the extent of damages. The estimate is to repair two areas, and to sand and refinish flooring in the living room. The photographic evidence of the floor is of limited value to compare with the estimate. In the absence of more material evidence I award the landlord nominal compensation of \$400.00.

Concerning the landlord's \$950.00 invoice; other than the filing fee, there is no provision for a party to make a claim under the *Act* for litigation costs, or costs related to an application for dispute resolution. Therefore I dismiss the landlord's claims of \$125.00 and \$150.00 for research and administrative duties in preparation for this hearing. I grant the landlord the balance of his invoice for the sum of \$675.00.

I also grant the landlord the costs for the deadbolt, cleaning and repair supplies, and additional cleaning invoices which add up to \$325.81.

Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant.

This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord established a claim of \$1400.81. I authorize the landlord to retain the tenant's \$500.00 security deposit for a balance owing of \$900.81. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$950.81.

This Order may be registered in the Small Claims 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: January 26, 2012.

Residential Tenancy Branch