



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant CNR, MT, OLC, RP
 Landlord OPR, MNR, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notice to End Tenancy, more time to make an application, for the landlord to comply with the Act and to make repairs to the unit.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on January 16, 2012 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by personal delivery on January 19, 2012, which was over the 3 day service requirement and not in accordance with section 89 of the Act, but the Landlord agreed with the service of the Tenant's documents and the hearing continued.

Both parties confirmed the receipt of the other parties' hearing package.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?

Tenant:

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Is the Tenant entitled to more time to make the application?
3. Has the Landlord complied with the Act?
4. Are there repairs to be done to the unit, site or property?

Background and Evidence

This tenancy started on December 1, 2010 as a fixed term tenancy with an expiry date of April 30, 2012. Rent is \$1,050.00 per month payable in advance of the 1st day of each month. The Tenancy agreement has a clause in it that makes a provision for an occupant with an additional charge of \$100.00 per month in rent, making the rent \$1,150.00 for three people in the unit. The Tenant paid a security deposit of \$525.00 and a pet deposit of \$325.00.

During the start of the hearing the Tenant said they are moving out of the rental unit at the end of January, 2012 and they are unable to pay the rent. The Tenant said they are withdrawing their application for those reasons.

The Landlord said that the Tenant did not pay rent of \$1,150.00 for the month of January 2012, when it was due and as a result, on January 2, 2012, he personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated January 2, 2012 to the Occupant at the rental unit for the Tenant. The Landlord continued to say the Tenant and Occupants have not paid the rent for January, 2012 and he requested an Order of Possession for as soon as possible.

The Landlord also said he is seeking to recover the \$50.00 filing fee for this proceeding. The Landlord said his total claim is for \$1,150.00 in unpaid rent and the \$50.00 filing fee for a total claim of \$1,200.00.

The Tenant said she has not paid the rent for January and she is unable to pay it at the present time, but she may be able to work out a payment arrangement with the Landlord. The Landlord said he would talk to the Tenant and the Occupant about working something out with them.

The Landlord said if the Tenant paid the unpaid rent they could stay in the rental unit until the end of January, 2012.

Analysis

Section 26 (1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent

I find that the Tenant and the Occupant have not paid the overdue rent and the Tenant does not have the right to withhold a part or all of the unpaid rent. The Tenant's application to dispute the Notice to End Tenancy has been withdrawn as the Tenant said they are moving out of the rental unit. Consequently, I find for the Landlord and award the Landlord an Order of Possession and a Monetary Order for unpaid rent.

I find pursuant to s. 55 of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant and occupants.

I also find that the Landlord is entitled to recover unpaid rent for the month of January, 2012 in the amount of \$1,150.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$1,150.00	
Recover filing fee	\$ 50.00	
Subtotal:		\$1,200.00
Balance Owing		\$1,200.00



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Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,200.00 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.

The Tenant's application was withdrawn by the Tenant during the hearing.

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*.

Residential Tenancy Branch