



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession pursuant to a Notice to End Tenancy for Cause - Section 47;
2. A Monetary Order for damage to the unit – Section 67;
3. A Monetary Order for unpaid rent – Section 67;
4. A Monetary Order for compensation – Section 67;
5. An Order to keep all or part of the security deposit – Section 38; and
6. An Order to recover the filing fee – Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Notice to End Tenancy for Cause valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on August 15, 2010. Rent in the amount of \$1,800.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$900.00 and a pet deposit in the amount of \$900.00.

The Landlord states that the Tenant has been repeatedly late with rent having been late in November and December 2011 and January 2012. The Tenant does not dispute these late payments but states that no Notice to End Tenancy has been received by the Tenant. The Landlord states that on December 20, 2011, the Tenant was served the with a 1 Month Notice to End Tenancy for Cause (the "Notice") by registered mail. The Notice has an effective date of January 31, 2012. The Landlord provided a receipt and tracking number for this service. The Tenant states that the Notice was not in the evidence materials served on the Tenant by the Landlord. It is noted that the Notice is not part of the materials filed by the Landlord for this Hearing. The Landlord states that the Notice was filed at the Branch. At the end of the Hearing, the Tenant submitted a letter stating that the Tenant agreed to the Landlord having possession of the unit on February 1, 2012.

The Landlord claims loss of rental income for February 2012 along with costs for damages to the unit. The Landlord states that given the current state of the unit, she believes that the Tenant will leave the unit damaged when he moves out and that the Landlord will lose rental income for that month as a result.

Analysis

Section 47 of the Act requires that upon receipt of a Notice to end Tenancy for Cause, the tenant may, within ten days of receiving the notice, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not dispute the Notice, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must vacate the unit by that date. Although the Tenant did not file an application to dispute the Notice, and without making a finding on the validity of the Notice, I accept the Tenant's agreement to vacate the unit on February 1, 2012. Given this fact, I find that the Landlord is entitled to an **Order of Possession effective 1:00 p.m. February 1, 2012.**

As the Tenant has not moved out of the unit at the time of the Hearing, I find that the Landlord's claims for damages to the unit and loss of rental income are premature as

the Tenant still has opportunity to remedy any damages before moving out of the unit and I dismiss this part of the LL's application with leave to reapply.

The Landlord is entitled to recovery of the **\$50.00** filing fee and I order the Landlord to retain this sum from the security and pet deposit.

Conclusion

I grant an Order of Possession effective 1:00 p.m. February 1, 2012 to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order the Landlord to retain the amount of \$50.00 from the security and pet deposit.

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 30, 2012.

Residential Tenancy Branch