



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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 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. D.N, the tenant's partner who is also named in the tenancy agreement, participated in the conference call; however tenant C.W interjected that he has been served a court order that prohibits him from having any contact with D.N; accordingly D.N agreed to hang up and the hearing proceeded with C.W.

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 recover the filing fee?

Background and Evidence

The rental unit consists of a one bedroom condominium. Pursuant to a written agreement, the fixed term tenancy started on January 1, 2012 and was to end on

February 28, 2014. The rent is \$1475.00 per month and the tenant paid a security deposit of \$740.00.

The tenant testified that on January 25, 2012, a serious domestic incident occurred which resulted in C.W. being taken away by the police and the no-contact order being issued. In her application for dispute resolution, she landlord states that the incident adversely affected the quiet enjoyment; jeopardized a lawful right of another occupant; put the landlord's property at risk; and seriously jeopardized the health and safety of an occupant. The landlord stated that the tenant's cheque for January 2012 bounced, and that the tenant did not pay rent for February 2012.

The parties did not dispute that on January 28, 2012, the landlord served D.N with a 1 Month Notice to End Tenancy in person, with an effective date of February 29, 2012. The tenant testified that his funds were locked up and that the landlord unreasonably expects him to pull money out of thin air. He stated that D.N was not the lease holder and that he was the primary tenant. he then stated that he was instructed not to pay the rent.

Analysis

Based on the parties' testimony, I accept that the tenant was served properly with the 1 Month Notice to End Tenancy. Although her application is for an order of Possession for unpaid rent, the landlord's details and testimony provided grounds to issue a 1 Month Notice and on that basis I find that the notice is valid and that the tenant is entitled to an Order of Possession.

I also accept the undisputed evidence that the tenant did not pay rent for January and February 2012. The tenant appeared fixated on the notion that D.N was not the lease holder, and that the landlord went around his back concerning service of documents. The Act requires that the landlord serve an adult who apparently resides with the person to be served. In this case the landlord served a tenant named in the tenancy agreement.

C.W. acknowledged receipt of the 1 Month Notice and attended the hearing. I accept that both C.W. and D. N. are named as tenants and that the landlord served the tenant in accordance with the Act.

Section 47(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy with cause does not make an application for dispute resolution within 10 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. On that basis alone I find that the landlord is entitled to an Order of Possession.

Section 26(1) of the *Act* specifies in part that a tenant must pay the rent when it is due under the tenancy agreement whether or not the landlord complies with the Act. The tenant did not pay the rent and I find the landlord entitled to a monetary order as claimed.

Conclusion

I grant the landlord an Order of Possession effective February 28th, 2012. 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 \$3000.00. I authorize the landlord to retain the tenants' \$740.00 security deposit for a balance owing of \$2260.00. 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 \$2310.00.

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: February 22, 2012.

Residential Tenancy Branch