



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, 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 - Section 55;
2. A Monetary Order for unpaid rent / loss of revenue - Section 67;
3. An Order to retain the security deposit - Section 38
4. An Order to recover the filing fee for this application - Section 72.

Both parties appeared and provided relevant testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions testimony of the other party. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The tenant testified that they have vacated the rental unit, however, they have not fully emptied the rental unit of belongings or cleaned the rental unit or returned the keys for the rental unit, and purport to do so.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on June 01, 2011. Rent in the amount of \$1400 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit and a pet damage deposit from the tenant in the respective amounts of \$700 each for a sum of \$1400.00. The tenant failed to pay rent in the month of April 2012 and on April 04, 2012 the landlord served the tenant with a Notice to End tenancy for non-payment of rent by posting same on the tenant's door – deemed served on the 3rd. day after – April 07, 2012. The tenant testified they vacated in the latter part of April 2012.

The parties agree the rent for April 2012 has not been paid. The tenant testified they had a reason for not paying the rent and not being satisfied with the landlord's response to a condition of the suite. The landlord claims loss of revenue for the month of May 2012 as the tenant's belongings remain in the rental unit, the rental unit remains unclean and the tenant has not returned the keys; therefore, the landlord has not been able to show the rental unit to prospective new tenants. The quantum of the landlord's monetary claim is for the unpaid rent for April 2012, loss of rent for May 2012 and the filing fee of \$50.00, in the aggregate claim of \$2850.00.

Analysis

Based on the relevant testimony of both parties and preponderance of the relevant evidence in this matter, I find that the tenant was served with a Notice to end tenancy for non-payment of rent and I find the notice to be valid. The tenant has not paid the outstanding rent and has not applied for Dispute Resolution to dispute the Notice and therefore is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice – April 17, 2012. The tenant has since purportedly vacated the unit. On reflection of the facts in this matter, I find that the tenant has not fully vacated from the rental unit, and their failure to remove all their belongings and return the keys has hampered the landlord's ability to remediate the unit in order to re-rent it

for May 2012. Based on the above facts I find that the landlord is entitled to an **Order of Possession**.

Section 26 of the Act, in part, states as follows;

Rules about payment and non-payment of rent

- 26** (1) 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.

Section 37 of the Act states as follows;

Leaving the rental unit at the end of a tenancy

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
 - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I find that the landlord has established a monetary claim for **\$1400** in unpaid rent for April 2012. With respect to the landlord's claim for loss of revenue for May 2012, I grant the landlord one half of the rent payable for the period May 01 – 15, 2012 in the amount of **\$700**, without leave to reapply. The landlord is also entitled to recovery of the **\$50** filing fee, for a total entitlement of **\$2150.00**. The security and pet damage deposits will be off-set from the award made herein.

Calculation for Monetary Order

Rental Arrears – April 2012	\$1400.00
Less security and pet damage deposits held	-\$1400.00
Total Monetary Award to landlord	\$750.00

Conclusion

I grant an Order of Possession to the landlord **effective 2 days** from the day it is served on the tenant. 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 that the landlord retain all the deposits of this tenancy of \$1400.00 in partial satisfaction of the claim and I grant the landlord an **Order** under Section 67 of the Act for the balance due of **\$750.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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: May 01, 2012
