



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, MNSD and FF
Tenant: CNR

Introduction

This hearing was convened on applications by both the landlord and the tenant.

By application dated April 27, 2012, the landlord sought an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served in person on the tenant's adult roommate and by posting on April 18, 2012. The landlord also sought a Monetary Order for unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

By application also of April 27, 2012, the tenants sought to have the same Notice to End Tenancy set aside.

As a matter of note, by letter of April 16, 2012, the landlord advised the tenants that he had appointed the applicant property management company to administer the tenancy on his behalf.

Issue(s) to be Decided

Should the Notice to End Tenancy be upheld or set aside, and if upheld, is the landlord entitled to an Order of Possession and Monetary Order as requested?

Background and Evidence

This tenancy began on October 1, 2011 under a one year fixed term agreement. Rent is \$800 per month and the landlord holds a security deposit of \$400 paid on October 1, 2011.

During the hearing, the landlord gave evidence that the Notice to End Tenancy was served when the tenants had failed to pay rent for December 2011 and February, March and April of 2012.

In addition, as the landlord advised that at the time of the hearing on May 22, 2012, the rent for May 2012 remained unpaid, I have exercised the discretion granted under section 64(3)(c) of the *Act* to amend the application to add the claim for May 2012 rent.

The landlord noted that the tenant had paid for plumbing repairs of \$601.44 in March 2012 and credits that much to the March rent, leaving an outstanding balance for the month of \$198.56.

The tenant stated that she had made various rent payments in cash directly to the landlord before the appointment of the property management firm in April 2012. However, the tenant has submitted no copies of receipts or other proof of payment.

Therefore, the landlord requested an Order of Possession and a Monetary Order for the unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off.

The tenant stated that her co-tenant named on the rental agreement had not moved in to the rental unit and questioned whether her present roommate should be named as respondent.

It would have been the responsibility of the tenant to propose an amendment of the rental agreement to the landlord and the present discrepancy may give rise to a cause of action in Small Claims Court among the tenant and her co-tenants. However, for the present, I am bound by the rental agreement.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenant did make application to contest the notice, but I find that she did not pay the rent within five days of receiving the notice.

Therefore, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenant. I further find that the landlord is entitled to a Monetary Order for the unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off, calculated as follows:

Rent for December 2011	800.00
Rent for March 2012 (after credit for plumbing repairs paid by tenant)	198.56
Rent for April 2012	800.00
Rent for May 2012	800.00
Filing fee	<u>50.00</u>
Sub total	\$3,448.56
Less retained security deposit (No interest due)	<u>- 400.00</u>
TOTAL	\$3,048.56

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenant.

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is also accompanied by a Monetary Order for **\$3,048.56**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

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 22, 2012.

Residential Tenancy Branch