



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the “hearing package”) by registered mail on May 22, 2012. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord’s hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant’s absence.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and utilities and if so how much?
4. Is the Landlord entitled to keep the Tenant’s security deposit?

Background and Evidence

This tenancy started on December 1, 2011 as a fixed term tenancy with an expiry date of May 31, 2012. Rent is \$455.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$207.50 on December 1, 2011.

The Landlord said the tenancy is a fixed term tenancy that ended on May 31, 2012 and the Landlord wrote to the Tenant on April 24, 2012 that the Landlord was not going to renew the tenancy. The Landlord continued to say the tenancy agreement says the tenancy can renew with a new fixed term tenancy agreement. The Landlord said that the month to month option for renewal is crossed out in the tenancy agreement and the policy of the Landlord since 2005 is to have only fixed term tenancy agreements. The Landlord say that Tenant disputed the end of the tenancy because the renew cause is check off so the Landlord issued a 1 Month Notice to End Tenancy for Cause. The Landlord said the cause was that the Tenant had other unauthorized people occupying

the unit and there were dogs in the unit in violation to the tenancy agreement. The Landlord provided 2 witness. Witness K.B. said there are 4 to 5 people living in the unit at the present time and there are 3 dogs that regularly live at the unit. Witness K.B. said he is the custodian of the rental complex and he has had numerous complaints about the Tenant and the Tenant's guess being loud and intoxicated. The second Witness C.S. said she is a community worker and has been trying to help the Tenant find new accommodations. Witness C.S. said the Tenant understands the tenancy has ended and he is being difficult and he is not willing to move.

The Landlord requested an Order of Possession for June 22, 2012 if her application is successful.

Further the Landlord requested a monetary order for unpaid rent up to June 22, 2012 if her application is successful as the Tenant has not paid any rent for June, 2012. The Landlord said the Tenant is overholding in the rental unit as the tenancy ended on May 31, 2012.

The Landlord also requested to recover the \$50.00 filing fee if her application is successful.

Analysis

In this situation the tenancy agreement states the tenancy ends on May 31, 2012, but may continue for another fixed length of time. The option of a month to month tenancy is removed and the Landlord wrote the Tenant on April 24, 2012 that they were not going to renew the tenancy or extend the tenancy. The Landlord said it has been company policy since 2005 not to enter into any month to month tenancy agreements and so all tenancy agreements since 2005 are for fixed term tenancies. Consequently I accept the Landlord's evidence and testimony that this tenancy ended on May 31, 2012 and I find that the Tenant is an **overholding tenant** in the rental unit. As such the Landlord has established ground to be granted an Order of Possession for June 22, 2012 at 1:00 p.m. as requested by the Landlord.

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 the right under this Act to deduct all or a portion of the rent.

Section 57 (3) of the Act says a landlord may claim compensation from an overholding tenant for the period the tenant occupies the rental unit after the tenancy has ended. I find the Landlord is entitled to compensation from June 1, 2012 to June 22, 2012 in the amount of \$455.00 rent amount X 22/33 days = \$333.66.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Overholding Unpaid rent for June, 2012	\$ 333.66	
	Recover Filing Fee	<u>\$ 50.00</u>	
	Subtotal		\$ 383.66
Less	Security Deposit	\$ 207.50	
	Interest	<u>\$ 0.00</u>	
	Subtotal		\$ 207.50
	Balance Owing		<u>\$ 176.16</u>

Conclusion

An Order of Possession effective June 22, 2012 at 1:00 p.m. and a Monetary Order in the amount of \$176.16 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.

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