



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNDC, MNSD and FF

Introduction

By application of September 17, 2012, the landlord seeks an Order of Possession pursuant to the tenant's refusal to vacate the rental unit on the date set by the fixed term agreement which required the tenant to vacate at its termination. The landlord also supports the request for an Order of Possession on a Notice to End Tenancy for cause on noting damage to the rental unit and the tenant's declaration she would not vacate as promised in the agreement.

The landlord also seeks authorization to retain the tenant's security deposit against substantially larger claims in damage and losses.

Despite having been served with the Notice of Hearing in person on September 18, 2012, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and authorization to retain the tenant's security deposit?

Background and Evidence

The landlord submitted into evidence a copy of the fixed term rental agreement to run from September 1, 2012 to September 30, 2012 with the election that the tenant must vacate on the end of tenancy date. Rent is \$450 per month and the landlord holds a security deposit of \$225.

By way of explanation the landlord advised that the tenant had arrived at the rental complex on or about August 25, 2012 desperate for accommodation. The landlord stated that, as an act of compassion, he embarked on the agreement to allow the tenant to stay for one month in the first identified rental unit which was under renovation at the time

While the tenant was permitted to move-in immediately, the agreement was for the month of September 2012 only.

The landlord became alarmed on learning that the tenant had painted graffiti on the wall and had taken the liberty of moving furniture from other units into the suite and on being told by tenant that she did not intend to move at the end of the fixed term, and served the Notice to End Tenancy on August 30, 2012.

When, at the end of the tenancy, the tenant still refused to move, having need of the rental unit, and having the tenant's word that she would vacate pending the outcome of the present hearing, the landlord permitted the tenant to stay in the second unit, larger \$600 unit for the \$450 rent until he was able to obtain the Order of Possession.

The landlord stated that with the damage to the first unit, the loss of rent and the filing fee, his losses are substantially more, but he asks only for authorization to retain the security deposit.

Analysis

I find that the landlord is entitled to an Order of Possession on both the tenant's refusal to honour the fixed term agreement and on the Notice to End Tenancy for cause, particularly the damage caused by the graffiti and interference with the lawful rights of the landlord under section 47 of the *Act*.

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 accept the evidence of the landlord that the damage, loss of rent and filing fee substantially exceed the amount of the \$225 security deposit. As permitted under section 72 of the *Act*, I hereby authorize the landlord to retain the deposit against the damage and losses incurred.

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.

The landlord is authorized to retain the tenant's security deposit in set off against the greater damage and loss.

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: October 19, 2012.

Residential Tenancy Branch