



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF
 MT, CNR, RPP

Introduction

This hearing was convened in response to an application filed by both the landlord and the tenant. The landlord seeks:

1. A monetary order pursuant to Section 67;
2. An Order of Possession pursuant to Section 55;
3. An Order to retain the security and/or pet deposit pursuant to Section 38; and
4. An Order to recover the filing fee pursuant to Section 72.

The tenant seeks:

1. More time to make an application to cancel a Notice to End Tenancy given for unpaid rent;
2. An Order cancelling the Notice to End Tenancy given for unpaid rent; and
3. The return of personal property.

The landlord testified that he served the tenant with the Notice to End Tenancy by posting the Notice to the rental unit door on October 5, 2012. The tenant acknowledges receiving the Notice on October 5, 2012. I therefore accept the evidence of both parties and find that the tenant was duly served with the 10 day Notice to End Tenancy on October 5, 2012.

Both parties appeared at the hearing of this matter and I accept that they both had notice of this hearing and these claims.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

Issue(s) to be Decided

Whether the landlord has cause to end this tenancy and receive an Order of Possession and whether the landlord is entitled to monetary order for unpaid rent and recovery of the filing fee. Whether the tenant should be provided with more time to make this application and whether the landlord has personal property belonging to the tenant which must be returned to the tenant.

Tenant's Application To Extend the Time to Make this Application

The evidence is that the tenant was served with the Notice to End Tenancy for unpaid rent on October 5, 2012. The tenant had 5 days within which to pay the full rent due as stated in the Notice or make application seeking to dispute the Notice that is by October 10, 2012 however the tenant did not file her application seeking to dispute the Notice until October 12, 2012.

An extension of time is granted only in extraordinary circumstances. An example of an extraordinary circumstance might be that the tenant was hospitalized during the time period within which she should have filed her application. In this situation a tenant would provide evidence that he or she was hospitalized during the time period and this may serve to allow an Arbitrator to extend the time to make an application. However, in this case the tenant has provided insufficient evidence of any circumstance to show that something extraordinary prevented her from filing her application within the appropriate time limit.

The tenant's application for more time is therefore dismissed.

Order of Possession

The landlord testified that the tenant moved into the rental unit in July 2012 at which time she paid July's rent of \$650.00 and a security deposit of \$300.00. The landlord testified that since that date the tenant has not paid any other rent whatsoever.

The tenant agrees that she has not paid any rent for August, September, October or November 2012.

Based on the evidence of the parties I find that the landlord is entitled to an Order for Possession. There is outstanding rent. The tenant has not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy within the time to do so and that time has expired. In these situations, the *Residential Tenancy Act* provides

that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice.

The landlord agreed to allow the tenant time to remove her goods. The Order of Possession will therefore take effect at 1 o'clock on Thursday, November 29, 2012.

Monetary Order

Rental Arrears

The tenant disputes the amount of rental arrears owing. On the 10 day Notice to End Tenancy the landlord stated that the rents owing were \$1,300.00 as at October 2012. At the hearing of this matter the landlord stated that the tenant had paid no rent whatsoever for August, September, October and November 2012. The tenant agrees that she has not paid the rent however she says the rent was reduced to \$200.00 per month by way of a verbal agreement because the rental unit was "uninhabitable". The tenant says she was using the rental unit for storage only. The landlord agrees that the rental unit in need of some repairs. The landlord testified that initially the tenant said she would wait for the repairs to be completed before moving in. The landlord did hire someone to complete the work but this was not completed properly but the tenant insisted on moving in and the landlord allowed her to do so.

Based on the evidence of both parties I find that the tenant paid no rent for the period August to November inclusive. The landlord says the rent was \$650.00 per month; the tenant says the rent had been reduced. Based on the 10 day Notice to End Tenancy issued by the landlord stating that rent of \$1,300.00 was due it is reasonable and probable to conclude that some agreement to reduce the rent had taken place. Dividing \$1,300.00 over the three months (August, September and October) the rent was not paid equates to \$433.33 per month rent not \$650.00; adding November's rent of at \$433.33 will mean rent currently due of \$1,733.32. I will therefore allow the landlord a monetary Order in that sum.

Tenant's Monetary Claim

The tenant has failed to supply sufficient evidence to support her claims that the landlord should be held responsible for storage and moving costs for her goods. This claim is therefore dismissed.

The tenant's claim for the recovery of the security deposit is dismissed also because the security deposit will be applied to the monetary award made in favour of the tenant.

Filing Fees

As the landlord has been mostly successful in his application I find that he is entitled to recover the filing fees paid for this application.

Calculation of total Monetary Award

Rental Arrears as detailed above	\$1,733.33
Less Security Deposit (no interest accrued)	-300.00
Total Monetary Award	\$1,483.33

Conclusion

The landlord is provided with a formal copy of an Order of Possession. This is a final and binding Order enforceable as any Order of the Supreme Court of British Columbia.

The landlord is provided with a formal copy of an order for the total monetary award as set out above. This is a final and binding Order enforceable as any Order of the Provincial 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*.

Dated: November 22, 2012.

Residential Tenancy Branch