



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords: OPR, MNR and FF
Tenant: CNR

Introduction

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

By application of October 12, 2012, the landlord seeks an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served by posting on the tenant's door on October 2, 2012 and setting an end of tenancy date of October 15, 2012. The landlord also seeks the Order of Possession pursuant to notice to end tenancy served by the tenant on August 29, 2012 setting an end of tenancy date of October 31, 2012. In addition, the landlord has requested a Monetary Order for unpaid rent and recovery of the filing fee for this proceeding.

By application of October 10, 2012, the tenant seeks to have the Notice to End Tenancy of October 2, 2012 set aside.

As a matter of note, with consent of the parties I have corrected the style of cause to amend the name of the landlord to the administering non-profit society from the personal name of the property manager as given on the landlord's application, and the name of the residential complex as given on the tenant's application.

The tenant has submitted a substantial package of evidence pertaining to bed bugs both in the form of general information and a diary of his personal experience in the rental unit. While the parties conducted a civil and intelligent discussion of that issue, the tenant's application claimed no remedy other than the setting aside of the notices to end tenancy and this decision is limited to that question.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession under either or both the notices and a Monetary Order for the unpaid rent and filing fee?

Is the tenant entitled to have the notices set aside?

Background and Evidence

This tenancy began on June 15, 2012 when, after several months, the tenant returned to the building in which he lived previously. Rent is \$418 per month and the landlord holds a security deposit of \$209 paid at the beginning of the tenancy.

During the hearing, the tenant concurred that, on August 31, 2012 he had served the landlord with a notice that he would be vacating he rental unit on October 31, 2012 and that he had paid no rent for October or November of 2012.

The tenant stated that he had given his notice and subsequently withheld the rent due to a bed bug infestation in the rental unit as he is particularly sensitive to the bites, and on behalf of the other tenants.

He stated that he had subsequently sought to withdraw the notice of August 31, 2012, but the landlord did not agree.

Subsequently, he withheld the October 2012 to draw attention to the infestation, resulting in the notice for unpaid rent of October 2, 2012.

As a matter of note, the representatives of the society who have had management responsibility of the rental building for only a short period advised that control of bed bugs was a major priority and they outlined initiatives taken and planned to address the issue.

The tenant stated that he had already moved most of his property out of the rental unit and anticipated that he would be returning he keys on the day of hearing.

Analysis

With respect to the tenant's notice to end tenancy of August 31, 2012, Residential Tenancy Policy Guideline 11 states that:

“A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties.”

Section 55(2)(a) of the *Act* makes provision for the issuance of an Order of Possession for the landlord to uphold a tenant's notice to end tenancy.

In the absence of agreement by the landlord with the tenant's wish to withdraw that notice, I find that the landlord is entitled to an Order of Possession.

With respect to the landlord's notice to end tenancy of October 2, 2012 for unpaid rent, Section 26 of the *Act* provides that tenants must pay rent when it is due, “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 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, while I find that the tenant did make application within the five days of receipt of the notice, I find that the outstanding rent was not paid within the five-day grace period provided by section 46 of the *Act* and that he did not have lawful reason to withhold rent. While there were other remedies available to the tenant under the circumstances, withholding of rent is not among them.

Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was October 15, 2012.

Accordingly, 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 for October 2012. Given time needed to advertise and prepare the rental unit for a new tenancy, it would be a practical impossibility for the landlord to begin a new tenancy in November 2012 and I award the landlord unpaid rent/loss of rent for this month as well.

Having upheld the Notice to End Tenancy of October 2, 2012 on the landlord's application, I dismiss the tenant's application to set it aside without leave to reapply.

In addition, as authorized by section 72 of the *Act*, I order that the landlord may retain the security deposit in set off against the rent owed.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

Rent for October 2012	\$418.00
Filing fee	<u>50.00</u>
Sub total	\$886.00
Less retained security deposit (No interest due)	<u>- 209.00</u>
TOTAL	\$677.00

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 accompanied by a Monetary Order for **\$677.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The tenant's application is dismissed without leave to reapply.

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 14, 2012.

Residential Tenancy Branch