



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC

Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord confirmed their intent on seeking money owed or compensation for damage or loss under the act regulation or tenancy agreement, by writing "*Tenant did not pay Novembers Rent. December's rent & January's rent*" in the details of dispute on their original application

Based on the aforementioned I find the Landlord's intention of seeking to recover the payment for use and occupancy or loss of rent, for a period after the tenancy ended in accordance with the 10 Day Notice, was an oversight and/or clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application. Therefore I amend their application, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep all or part of the security and or pet deposit; and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The Landlord submitted documentary evidence which indicates the Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on December 10, 2012 by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding, in accordance with the Act; therefore I proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included a copy of the 10 Day Notice to end tenancy for unpaid rent.

The Landlord stated that the parties entered into a verbal tenancy agreement that began on October 1, 2012. Rent is payable on the first of each month in the amount of \$900.00 and no security deposit has been paid. When the Tenant failed to pay the November 1, 2012 rent a 10 Day Notice was posted to the Tenant's door on November 21, 2012.

The Landlord advised that he received a call from the strata manager a few weeks ago indicating that the Tenant is still occupying the unit and has caused damage to the common area. He has sought to regain possession of the unit as soon as possible and to recover the unpaid rent for November, December and January.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on November 24, 2012, three days after it was posted to her door, and the effective date of the Notice is **December 4, 2012**, in accordance with section 90 of the Act. The Tenant did not pay the rent and did not dispute the Notice, therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent of \$2,000.00 which was due November 1, 2012 and December 1, 2012 (2 x \$1,000.00). The Tenant failed to pay rent in accordance with the tenancy agreement which is a breach of section 26 of the Act. Accordingly, I award the Landlord a Monetary Award for unpaid rent of **\$2,000.00**.

As noted above this tenancy ended **December 4, 2012**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for January 2013, not rent. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and they will have to work to find replacement tenants. Therefore, I find the Landlord is

entitled to use and occupancy and any loss of rent for the entire month of January 2013, in the amount of **\$1,000.00**.

I note that the Landlord indicated on his application that they wished to keep the security deposit; however, in his oral testimony he affirmed that the Tenant did not pay a security deposit. If the Landlord determines at a later date that there was in fact a security deposit paid I Order that it is disbursed in accordance with section 38 of the Act.

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$3,000.00** (\$2,000.00 + \$1,000.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: January 14, 2013

Residential Tenancy Branch

