



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPB MNR MNDC FF

Preliminary Issues

Upon review of the Landlord's application it was noted that they had applied for two Orders of Possession, one for unpaid rent and one for breach of an agreement. The Landlord confirmed that they had not issued a notice to end tenancy for breach of agreement and that they were seeking to obtain possession of the unit based on unpaid rent. Therefore, the application was amended to remove the request for an Order of Possession for breach of an agreement, in accordance with section 64 of the Act.

The Landlord also 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 November and December 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, money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the

hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Landlord be issued an Order of Possession?
2. Should the Landlord be awarded a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: two 10 Day Notices to end tenancy for unpaid rent; their written statement; the tenancy agreement; the Landlord's written statement; and letters written by the Tenant to the Landlord.

The parties confirmed they entered into a written tenancy agreement that began on October 5, 2011. Rent is payable on the last day of the month in the amount of \$625.00.

The Tenant appeared and acknowledged receipt of both 10 Day Notices. She confirmed that she is still occupying the rental unit even though she has not paid rent for November 2012, December 2012 or January 2013. She stated she has withheld her rent payments because there is a mold issue.

The Landlord clarified that the first 10 Day Notice was slide under the Tenant's door, at her request, on November 8, 2012 and the second 10 Day Notice was personally served to the Tenant on November 26, 2012. He is seeking to obtain possession for as soon as possible and a monetary order for the unpaid rent.

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 appeared and confirmed receipt of the 10 Day Notices on November 8, 2012 and November 26, 2012. Therefore the effective date of the first Notice is **November 18, 2012**, in accordance with section 90 of the Act. The Tenant did not pay the rent and did not dispute either 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 \$625.00 which was due November 1, 2012. 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 **\$625.00**.

As noted above this tenancy ended **November 18, 2012**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for December 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 then 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 December 2012 and January 2013, in the amount of **\$1,250.00** (2 x \$625.00).

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

The Landlord has been successful with their application; therefore, I award recovery of their filing fee in the amount of **\$50.00**.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$1,925.00** (\$625.00 + \$1,250.00 + \$50.00). 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 21, 2013

Residential Tenancy Branch

