



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC/MC REALTY CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB, MNR, MNSD, FF, O

Introduction

This hearing dealt with the landlord's application for an Order of Possession and a Monetary Order for loss of rent and storage fees; and, authorization to retain the security deposit.

Preliminary and Procedural Matters

The landlord had named two tenants in filing this Application. The landlord sent hearing packages to each named tenant via registered mail on August 1, 2013 using the rental unit address. The landlord provided copies of the registered mail receipts, the tracking information posted by Canada Post, and the returned envelopes. Both hearing packages were returned to the landlord as unclaimed. I heard that the male tenant moved out of the rental unit on July 23, 2013. The landlord affirmed that the female tenant continues to reside in the rental unit as of the day of this hearing.

Where a landlord serves a tenant via registered mail, the Act requires that a landlord send the registered mail to the tenant's address of residence or the tenant's forwarding address. In this case, I was satisfied the female tenant was served with the Application for Dispute Resolution in a manner that complies with the Act and she is deemed to be served five days later pursuant to section 90 of the Act. However, I found the male tenant was not sufficiently served as he was not residing at the rental unit at the time of mailing and I excluded him as a named party to this dispute.

The landlord requested that I amend the monetary claim to include loss of rent for September 2013 since the female tenant refuses to vacate the rental unit. I have considered the landlord's request as I find the request non-prejudicial since the tenant continues to benefit from occupation of the rental unit.

Finally, I have amended the dispute codes indicated on the Application for Dispute Resolution to correspond to the requests made by the landlord as described in detail in the details of dispute.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to compensation for loss of rent and storage fees for the months of August and September 2013?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

Two co-tenants entered into a tenancy agreement with the landlord for a tenancy set to commence May 1, 2012. The tenants paid a security deposit of \$627.50. After the fixed term expired on April 30, 2013 the tenancy continued on a month-to-month basis. Starting May 1, 2013 the monthly rent was increased to \$1,287.00. The tenants had also been provided a storage locker at a cost of \$10.00 per month for a total monthly obligation of \$1,297.00.

On June 9, 2013 the tenants gave the landlord written notice to end the tenancy effective July 31, 2013. The landlord proceeded to secure a replacement tenant starting August 1, 2013. The male tenant moved out of the rental unit and returned his keys to the landlord on July 23, 2013. The male tenant transferred his interest in the security deposit to the female tenant, in writing, on July 23, 2013. The female tenant has refused to vacate the rental unit and rent has not been paid or collected since July 2013.

In filing this Application, the landlord requested an Order of Possession based upon the tenants' written notice to end tenancy and recovery of loss of rent and storage locker fees for August 2013. During the hearing, the landlord further requested that I consider the landlord's loss of rent and storage fees for September 2013 since the tenant continues to occupy the rental unit.

Documentary evidence provided by the landlord included copies of: the tenancy agreement; a Notice of Rent Increase; a notice indicating the tenants rented a storage locker for \$10.00 per month; the tenants' notice to end tenancy; the transfer of the male tenant's interest in the security deposit to the female tenant; the tenants' ledger; written communication dated July 30, 2013 regarding the end of tenancy; and, the registered mail evidence described previously.

Analysis

Upon review of the tenancy agreement, I find the tenancy converted to a periodic (ie: month-to-month) tenancy after the fixed term expired on April 30, 2013. The Act provides that a periodic tenancy ends when a tenant gives the landlord at least one full month of written notice. The landlord has provided evidence that the tenants gave the landlord proper written notice to end the tenancy effective July 31, 2013. Therefore, I find the tenancy legally ended on July 31, 2013.

When a tenancy comes to an end the tenants must return vacant possession of the rental unit and return all keys to the landlord. Since the tenancy has ended and the female tenant has not returned vacant possession of the unit to the landlord I find the landlord entitled to an Order of Possession as requested. Provided to the landlord is an Order of Possession effective two (2) days after service upon the tenant.

When a tenant continues to occupy a rental unit after the tenancy ends that tenant is called an "overholding tenant". The Act provides that a landlord may claim compensation against an over-holding tenant for the period of time the tenant occupies the rental unit after the tenancy ended. Having hearing the tenant continues to occupy the rental unit as of the date of this hearing, and allowing a few days for service of the Order of Possession provided with this decision, I award the landlord compensation equivalent to rent and storage fees for the period of August 1, 2013 through September 15, 2013. The landlord remains at liberty to file another Application for Dispute Resolution should the landlord suffer other losses or loss of rent for days after September 15, 2013 due to the tenant's actions or negligence.

As the landlord was successful in this Application for Dispute Resolution, I further award the landlord the filing fee paid for this Application. I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord.

In light of the above, with this decision I provide the landlord a Monetary Order calculated as follows:

Loss of rent and storage fees (Aug 1 through Sep 15, 2013)	\$ 1,945.50
Filing fee	50.00
Less: security deposit	<u>(627.50)</u>
Monetary Order	\$ 1,368.00

The Monetary Order must be served upon the tenant and may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$1,368.00 to serve and enforce as necessary.

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: September 10, 2013

Residential Tenancy Branch

