



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR CNR OPR

Introduction:

This is an Application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order for unpaid rent pursuant to sections 46 and 67;
- b) An Order of Possession pursuant to sections 46 and 55; and
- c) Recovery of the filing fee for the Application.

This was also a cross application by the tenant to cancel the Notice to End the Tenancy for non-payment of rent dated January 8, 2014 (as corrected). Both parties were present at the hearing and agreed they received the documents from each other.

SERVICE:

I find that the Notice to End a Residential Tenancy was served personally on the Tenant on January 8, 2014. There was dispute about the dates on a subsequent Notice to End Tenancy in February. Both parties admitted service of the application for dispute resolution.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The original tenancy began on December 1, 2013. There were 3 tenants in this basement unit and each had a separate tenancy agreement. This tenants agreement states rent is \$400 a month and she paid a security deposit of \$200 on December 2, 2013. Both parties agreed that the tenant had not paid rent for January and February 2014 and was served with a Notice to End Tenancy in each month. The landlord said the other two tenants moved on January 31, 2014 but this tenant did not and is now occupying the entire suite. He requests an Order of Possession effective as soon as possible and a monetary order for \$800.

The tenant testified she did not pay the rent because the landlord telephoned the Ministry after serving her the Notice to End Tenancy on January 9, 2014 and said she no longer lived there so the Ministry withheld her rent supplements. She said it is very difficult to get a home for landlords do not like to deal with recipients of benefits.

She said the landlord changed the lock on the entrance door on January 31, 2014 and put her belongings outside. She had to call the Police and after arguments amounting to physical confrontation, the landlord was forced to give her the new key. The landlord

denied calling the Ministry but said he did the right thing in serving a ten day Notice to End the tenancy. He admitted he changed the locks on January 31, 2014, the Police came and he gave them the new key but said he did not know who had put the tenant's goods outside.

Analysis:

The Notice to End a Residential Tenancy is based on non-payment of rent. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent. Although the tenant disputed the Notice in time, she agrees that she has not paid the rent and section 26 of the Act provides that a tenant must pay rent when due whether or not the landlord has fulfilled his obligations under the Act. Although the tenant said she could not pay rent because of the landlord telephoning the ministry and stating she had moved, I find if this happened (and the landlord denies it), her evidence is that it happened after she had failed to pay rent for January 2014 so I conclude it did not prevent her paying her rent in January. I therefore dismiss the tenant's application to cancel the Notice to End the Tenancy dated January 8, 2014. I grant the landlord an Order for Possession.

I find the weight of the evidence is that the landlord tried to illegally evict the tenant on January 31, 2014 by changing the lock and putting her goods outside; I find the Police had to intervene to allow the tenant to gain access to her suite. Although the landlord admitted he changed the locks, I find his claim that he did not put the tenant's goods outside is improbable. I find the preponderance of the evidence is that the landlord invaded the tenant's privacy and significantly interfered with her peaceful enjoyment; therefore I grant her a rebate of rent of \$200 (half of one month's rent) as compensation. **I caution the landlord to consult the last page of this decision and proceed legally to enforce the Order of Possession and Monetary Order.**

Conclusion:

I grant the landlord an Order for Possession effective two days from service. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement. I have dismissed the tenant's application without recovery of the filing fee.

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: February 27, 2014

