



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, O, OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with applications from both the landlord and one of the tenants under the *Residential Tenancy Act* (“the *Act*”). The landlord applied, naming all three tenants for:

- an Order of Possession for Unpaid Rent pursuant to section 55;
- a monetary order for unpaid rent, damage or loss pursuant to section 67;
- authorization to retain all or a portion of the tenants’ security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenant (Tenant CS) applied for:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (“10 Day Notice”) pursuant to section 46;
- an other unspecified remedy under the *Act*; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

One of the tenants named in the landlord’s application, the landlord, his assistant and the landlord’s agent attended the hearing. All parties present were given a full opportunity to be heard, to present their sworn testimony, and to make submissions.

At the outset of the hearing, the tenant sought to withdraw his application to cancel the notice to end tenancy, receive another remedy under the *Act* and recover his filing fee. He testified that he would vacate the rental unit at the end of April 2015. The tenant’s application is therefore withdrawn. However, the tenant disputed the landlord’s application for outstanding rent submitting that he was not wholly responsible for the unpaid rent, given that he resided with two co-tenants.

The landlord and his agent both testified that the 10 Day Notice was served to the tenants of the rental unit on March 12, 2015 by personally serving Tenant DL at the rental unit. Pursuant to section 88(e) of the Act, a tenant may be served with a notice to end tenancy by leaving a copy at the person's residence with an adult who apparently resides with that person. Given the undisputed testimony of the landlord and the corroborating testimony of the tenant who attended this hearing, I find each of the three tenants have been deemed served with the 10 Day Notice.

The landlord's agent testified that three tenants were served with the landlord's Application for Dispute Resolution package and Notice of Hearing by individual registered mail packages on March 23, 2015. Tenant CS confirmed receipt of the landlord's dispute resolution package. The landlord submitted receipts and tracking numbers for all three registered mailings. Based on the evidence provided and pursuant to section 89 and 90 of the Act, I find that each of the three tenants named in the landlord's application were deemed served on March 28, 2015, 5 days after the registered mailings.

Issues to be Decided

Is the landlord entitled to a two day Order of Possession? Is the landlord entitled to a monetary award for unpaid rent and for damage or loss arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the respondents/tenants?

Background and Evidence

This tenancy began on October 1, 2014 with a rental amount of \$1350.00 payable on the first of each month. Three tenants resided in the rental unit and both the landlord and Tenant CS testified that the rent was split evenly between the three tenants. The landlord testified that he continues to hold a security deposit in the amount of \$700.00 paid by the tenants at the start of the tenancy. Both landlord and Tenant CS testified that no written tenancy agreement was created with respect to this tenancy but that the amount of the rent, the named tenants and other details of the nature of the tenancy including when the rent was to be paid and what services were included in the tenancy were all agreed on by the parties involved.

The landlord applied for a two day Order of Possession for unpaid rent. The landlord testified that none of the tenants had paid any rent for the months of January 2015, February 2015 or March 2015. The landlord testified that he believes the other tenants

have vacated the rental unit but that Tenant CS continues to reside in the unit. The landlord testified that the tenants did not pay rent of \$1350.00 due on March 1, 2015. Based on the tenants' failure to pay rent for three consecutive months, the landlord issued a 10 Day Notice to End Tenancy. The landlord provided undisputed testimony that the tenants did not pay the March 2015 rent after receiving the 10 Day Notice on March 12, 2015. As of the date of this hearing, the landlord testified that the following rental amounts remain outstanding.

Item	Amount
Rental Arrears October 2014	\$450.00
Rental Arrears November 2014	450.00
Rental Arrears December 2014	900.00
Rental Arrears January 2015	1350.00
Rental Arrears February 2015	1350.00
Rental Arrears March 2015	1350.00
Total Rental Arrears claimed by the Landlord	\$5850.00

The landlord sought a monetary award of \$5850.00 for the months of rental arrears as indicated above. The landlord also sought rental loss for April 2015 testifying that, as of the date of this hearing, the tenant remains in the rental unit and has paid no rent for the month of April.

The tenant testified that he paid his portion of rent for the months of October 2014, November 2014 and December 2014. The tenant confirmed, in his testimony, that his co-tenants had not paid rent in October and November 2014. He also testified that one co-tenant had not paid rent in December 2014. The tenant testified that neither he nor his co-tenants paid rent for January 2015, February 2015 or March 2015. The tenant testified that his co-tenants have now vacated the rental unit and that, while he still resides in the unit as of the date of this hearing, he intends to vacate for the end of the month. He provided testimony indicating that his roommates were extremely unreliable and had left him in the rental unit without any rent for the months they resided in the rental unit. He testified that, at one point, he had tried to pay partial rent to the landlord but that the landlord would not accept the partial payment. He testified that there were other difficulties in dealing with the landlord including the landlord asking for rent early in the month of December because he was going to be out of the country when the rent was due.

Analysis

While the landlord prepared no written rental agreement, I find there was a meeting of the minds of all parties with respect to the terms of this tenancy. As required in section 12 of the *Residential Tenancy Act*, the parties had agreed that;

- the landlord was provided with the legal names of all tenants and the tenants were provided the legal name of the landlord;
- the address of the rental and the start date of the tenancy were clearly defined as well as the fact that this would be a month to month tenancy;
- the rent was in the amount of \$1350.00 payable on the first of each month by three named co-tenants;
- the landlord held a security deposit provided by the tenants that was subject to the provisions of the *Residential Tenancy Act*; and
- the tenancy itself was subject to the provisions of the *Act*.

The tenants failed to pay the March 2015 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant withdrew his application pursuant to section 46(4) of the *Act* and did not dispute the landlord's testimony that rent was unpaid for this tenancy. In his testimony, Tenant CS acknowledged that January, February, March and April 2015 rent had not been paid by himself or his co-tenants. Given that the tenant withdrew his application to cancel the notice to end tenancy and that he testified confirming that 3 full months' and 3 partial months remain unpaid for this residential premises, I find that the landlord is entitled to a 2 day Order of Possession for unpaid rent.

With respect to the landlord's claim for a monetary award, I note the following evidence:

- the co-tenants did not attend this hearing but were sufficiently served in accordance with the *Act*;
- the nature of this tenancy was clearly outlined and agreed to by all parties;
- the tenant who attended this hearing does not dispute that rent remains unpaid;
- the tenant testified that he remains in the rental unit but intends to vacate by the end of the month;
- the tenant submitted that he should not be responsible for the entirety of the outstanding rent, given that the rental agreement included co-tenants; and
- the date of this hearing and decision will not allow the landlord to be in a position to re-rent the premises before May 1, 2015.

I find the landlord has justified his application and claim of unpaid rent for partial amounts in October, November and December 2014 and for the entire rental amount in January, February and March 2015. I find that the landlord is entitled to receive an order for unpaid rent for these months totalling \$5850.00. I accept the evidence of both parties that this amount of rental arrears remains outstanding. Both parties testified that the tenant remains in the rental unit as of the date of this hearing. Based on the date of this hearing, the fact that the tenant testified he does not intend to vacate the rental unit before the end of the month and therefore, the landlord's inability to place another tenant in the unit before May 1, 2015, I issue a monetary order that includes \$1350.00 in rental loss for April 2015.

The landlord testified that he continues to hold a security deposit of \$700.00 plus interest from October 1, 2014 to the date of this decision for this tenancy. Pursuant to section 72, I allow the landlord to retain the security deposit plus any interest in partial satisfaction of the monetary award. No interest is payable over this period.

The landlord sought to recover his filing fee in this application. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

I issue a monetary order in favour of the landlord as follows;

Item	Amount
Rental Arrears - October 2014	\$450.00
Rental Arrears - November 2014	450.00
Rental Arrears - December 2014	900.00
Rental Arrears - January 2015	1350.00
Rental Arrears - February 2015	1350.00
Rental Arrears - March 2015	1350.00
Rental Loss - April 2015	1350.00
Less Security Deposit	-700.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$6600.00

Unless evidence to the contrary is provided, there is a presumption in law of a joint tenancy. Joint tenants are joint and severally liable for monies owed to the landlord relating to the tenancy. In this case, the fact that the rent was split, the agreement to rent at this unit and pay rent under agreed upon conditions, all aspects of the arrangement reflect a joint tenancy agreement. Residential Tenancy Policy Guideline No. 13 clarifies the intention of the legislation stating;

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord... Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended.

Based on all the evidence provided in this hearing, I find this living arrangement was a joint tenancy with agreed upon terms by all parties to the tenancy. I find that the rent from October 2014 to the date of this hearing remains unpaid in full. I find that the three co-tenants were all served in accordance with the *Act*. I find the landlord is entitled to a 2 Day Order of Possession and a monetary award for unpaid rent and loss of rent against all three tenants.

Conclusion

The tenant's application to cancel the notice to end tenancy, receive another remedy under the *Act* and recover his filing fee was withdrawn.

I am granting the landlord an Order of Possession to be effective two days after notice is served to the tenant(s). If the tenant and any other occupant do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlords in the amount of \$6600.00 against the three tenants named in the landlord's application. The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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: April 22, 2015

Residential Tenancy Branch