



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TWIN GABLES MOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, OPB, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for Cause; for an Order of Possession because the tenant breached an agreement with the landlord; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant, the landlord and the landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for cause?
- Is the landlord entitled to an Order of Possession because the tenant breached an agreement with the landlord?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this month to month tenancy started on June 05, 2015. Rent for this unit is \$690.00 per month due on the 1st of each month. The tenant paid a security deposit of \$345.00 at the start of the tenancy and this continues to be held in trust by the landlord.

The landlord testified that the tenant was served a One Month Notice to End Tenancy for Cause (the Notice) by posting it in the tenant's mail slot on September 23, 2015. The Notice has an effective date of October 31, 2015 and provides the following reasons to end the tenancy:

- 1) *The tenant has allowed an unreasonable number of occupants in the unit*
- 2) *The tenant or a person permitted on the residential property by the tenant has*
 - (i) *Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
 - (ii) *Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
 - (iii) *Put the landlord's property at significant risk;*
- 3) *Security or pet deposit was not paid within 30 days as required by the tenancy agreement*

The landlord has provided written submissions supporting the reasons given on the Notice. These include, but are not limited to, junk and debris piled around the unit, unregistered guests living in the unit, another guest fighting in front of the unit causing disturbances to other tenants, fireworks being set off in the door way and inside the unit, high police presence at the unit, excessive traffic and noise from the unit, constant flow of people in and out the unit and parents of children in the unit have kicked the door down to remove their children, early morning screaming and yelling, a broken window in the unit, tenants dog unleashed and running around, slamming of car doors and vehicles speeding away from the unit.

The landlord testified that the tenant also failed to pay the pet deposit as agreed on the tenancy agreement within 30 days of moving into the unit.

The landlord seeks an Order of Possession effective as soon as possible as the tenant did not dispute the Notice and should have vacated the rental unit on October 31, 2015.

The landlord's agent testified that the tenant has failed to pay rent for November and December, 2015. The Ministry normally send a cheque to the landlord; however, nothing was received for November. A cheque did come for partial payment of December's rent; however, the Ministry requested that the landlord return that cheque to them. The landlord's agent testified that December's cheque was subsequently returned to the Ministry. The landlord seeks to recover the unpaid rent for November and half the rent for December to an amount of \$1,035.00.

The landlord requested an Order permitting them to keep the security deposit of \$345.00 in partial satisfaction of unpaid rent. The landlord also seeks to recover the filing fee of \$50.00 from the tenant.

The tenant testified that she did not know she had to file an application to dispute the Notice.

The tenant testified that the Ministry did send a cheque for November's rent to the tenant and the landlord's agent refused to take it from the tenant. The tenant testified she still has this cheque and is willing to pay it to the landlord.

The landlord's agent testified that she did not take the cheque as the tenant only offered it to the landlord's agent past the effective date of the Notice and the landlord's agent was worried that if she accepted the rent she would reinstate the tenancy.

Analysis

With regard to the landlord's application for an Order of Possession for Cause; when a tenant is served with a One Month Notice to End Tenancy the tenant is provided with information on page two of that Notice about how the tenant can dispute the Notice by filing an application for Dispute Resolution. The landlord has provided a copy of this Notice served upon the tenants on September 23, 2015. This Notice was posted in the tenant's mail slot and is therefore deemed to have been served three days later on September 26, 2015. The tenant had until October 06, 2015 to dispute the Notice and has failed to do so.

Consequently, as the tenant did not file an application to dispute the Notice the tenant is presumed to have accepted the end of the tenancy pursuant to s. 47(5) of the *Act*. The Notice indicates an effective date of October 31, 2015; as this date has since passed I find the landlord is entitled to an Order of Possession effective two days after service upon the tenant pursuant to s. 55 of the *Act*.

As I have issued an Order of Possession based on the One Month Notice to End Tenancy I am not required to deal with the landlord's application for an Order of Possession because the tenant breached an agreement with the landlord.

With regard to the landlord's application for a Monetary Order for unpaid rent; the tenant testified that she tried to pay rent for November but the landlord refused to take it. The tenant agreed that the rent for December was not paid. The landlord's agent testified that she did not accept the cheque from the tenant as she did not want to reinstate the tenancy as the tenant offered this after the effective date of the Notice. It is my decision that for whatever reasons the landlord did not accept the rent for November, the fact remains that the rent is still outstanding and must be paid by the tenant. I further find that as the landlord has only requested half a month's rent for December this must also be paid by the tenant. The landlord has therefore established a claim to recover rent for November of **\$690.00** and half a month's rent for December of **\$345.00**.

I Order the landlord to retain the security deposit of **\$345.00** pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the unpaid rent.

As the landlord's claim has merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord pursuant to s. 67 and 72(1) of the *Act* for the following amount:

November rent	\$690.00
Half of December's rent	\$345.00
Filing fee	\$50.00
Less security deposit	(-\$345.00)
Total amount due to the landlord	\$740.00

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service upon the tenant. This Order must be served on the tenant. If the tenant fails to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$740.00**. The Order must be served on the tenant. Should the tenant fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: December 16, 2015

Residential Tenancy Branch

