



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDC, MNR

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* ("the *Act*") for orders as follows an Order of Possession for Cause pursuant to section 55 and a monetary order for unpaid rent and damage or loss as a result of the tenancy pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord provided evidence that a 1 Month Notice to End Tenancy for Cause was personally served to the tenant on September 30, 2015. The tenants confirmed receipt of the notice posted on their rental unit (trailer) door. The tenants also confirmed receipt of the landlord's Application for Dispute Resolution hearing package. I accept that the tenants were sufficiently served with the 1 Month Notice and the Application for Dispute Resolution hearing package.

Preliminary Issue: Name of Co-Tenant in Dispute Resolution Application

Tenant CH argued that "Co-Tenant AF" should not be party to this application as her name is spelled incorrectly on all of the application forms. The landlord argued that, as there was no formal written tenancy agreement between these parties, they had to guess at the spelling of the tenants' names. I find that, given the requirements of the *Act* to accurately name a party in an Application for Dispute Resolution, the co-tenant AF should not be named formally in this decision and the application against her dismissed. However, I further note that, as with all residential tenancies, any decision made regarding occupation of the rental unit or monetary order may include both tenants as jointly and severally liable.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for Cause?

Are the landlords entitled to a monetary award for unpaid rent and anticipated losses arising out of this tenancy?

Background and Evidence

The tenants gave evidence that the residential tenancy began on October 1, 2013. The landlords testified that they took possession of the property as a result of purchasing the property on September 1, 2014. The landlords testified that they anticipated the tenancy would have ended before they took possession but, on arrival to the property, they discovered that the tenants had not vacated the rental unit. The landlords testified that they agreed to continue to rent the property to the tenants for the following 2 years on the condition that the tenants pay \$400.00 on the first of each month. The parties did not create a new written residential tenancy agreement. Tenant CH testified that he paid \$225.00 to the original landlord at the outset of his tenancy and that the \$225.00 has not been returned to him. The landlords did not dispute this testimony.

The landlord has applied for an Order of Possession for Cause relying on a number of grounds;

- *Tenant is repeatedly late paying rent.*
- *Tenant or a person permitted on the property by the tenant has:*
 - *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
 - *put the landlord's property at significant risk.*
- *Tenant has engaged in illegal activity that has, or is likely to:*
 - *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *Tenant has not done required repairs of damage to the unit/site*

The landlords testified that rent has not been paid for the rental unit for the months of October 2015, November 2015, or December 2015. The landlords provided undisputed testimony that the tenants continue to reside in the rental unit. The landlords testified that the tenants had failed to pay rent on time for several previous months. Landlord SM testified that the tenants had only paid rent on time twice since October 2014. Both tenants testified that their rent is paid directly to the landlords by the tenants once they receive payment from a third party. The tenants disputed that their rent had been late regularly, stating that their rent had been late approximately twice prior to October 2015. The tenants testified that they attempted to have the landlords sign documentation for the third party so that they could pay the outstanding rent. The tenants testified that the

landlords refused to sign the documents provided by the tenants. The tenants testified that the third party is prepared to provide payment for their rental arrears but requires an agreement that the tenancy will continue.

The landlords issued a 1 Month Notice for Cause. The landlords identified a number of grounds to end this tenancy. Landlord FM testified that the tenants' dog tried to bite him when he entered their rental unit thereby jeopardizing his health and safety. The tenants denied that their dog had ever bit the landlord and claimed that he comes into their rental unit without permission or notice. As well, Landlord FM testified (without any supporting documentation or photographic evidence) that the tenants have stored items in a horse stall and those items have drawn bears to the rural property.

Landlord FM testified that the tenants have failed to make repairs to the stairs of the rental unit (trailer) on the residential premises. Tenant CH testified that he built stairs to the unit and that they are in "fine condition".

Landlord FM also testified that the tenants have not paid rent at all in several months. Landlord SM testified that the tenants did not pay rent of \$400.00 due on October 1, 2015. Landlord SM testified that the tenants did not pay rent of \$400.00 due on November 1, 2015. Landlord SM testified that the tenants did not pay rent of \$400.00 on December 1, 2015. The tenants did not deny that these rental amounts remain unpaid. All parties agreed that the tenants continue to reside in the rental unit.

The landlords claim, given the date of this hearing, that they will be unable to re-rent the rental unit for January 1, 2016 if the tenancy were to come to an end. Therefore, the landlords also seek to be compensated for January 2016 rent in the amount of \$400.00.

Analysis

The landlord must provide proof that the grounds he has identified in his notice to end tenancy are valid and that they meet the standard required under the *Act* for each of those grounds. For example, the landlord must show that a tenant has seriously jeopardized the health, safety or lawful right of another occupant or the landlord.

Based on the testimony and evidence presented for this hearing, I do not find that the landlord has provided any proof to support a claim that the tenancy should end as a result of illegal activity by the tenants or that the landlord has provided any proof to support the allegation that the tenants' dog bit him. I do not find that the landlord has provided any proof sufficient to support the allegation that the tenants have improperly stored items in a manner that has brought wildlife to this residential property. Therefore,

I will not consider further their application for an end to tenancy on the following grounds;

- *tenant or a person permitted on the property by the tenant has:*
 - *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
 - *put the landlord's property at significant risk.*
- *Tenant has engaged in illegal activity that has, or is likely to:*
 - *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *Tenant has not done required repairs of damage to the unit/site*

The landlords did provide undisputed evidence that the tenants have paid rent late on at least 2 dates prior to October 2015. However, the tenants do not dispute that the October, November and December 2015 rental amounts remain unpaid for a total of \$1200.00 in rental arrears. Despite the tenants' testimony that a third party pays the rental amount, it is ultimately the tenants' responsibility to pay rent in full and on time every month.

In this matter, section 26 puts responsibility squarely on the tenants for payment of rent, whether a residential tenancy agreement is written or oral.

Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent."

The landlords have applied to end this tenancy pursuant to a 1 Month Notice for Cause for repeatedly late rental payments by the tenants. Residential Tenancy Policy Guideline No. 38 provides guidance with respect to an application to end tenancy for late payment of rent. It states,

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late

Based on the landlord's undisputed evidence regarding late (and non-payment) of rent for the months of October 2015, November 2015 and December 2015. The tenants argue that, since their rent is in fact unpaid and not late, the landlords have issued the incorrect notice. I find that unpaid rent is also late rent. The issuance of a 1 Month Notice for late rent as opposed to a 10 Day Notice for Unpaid Rent is merely a benefit in the time period to end the tenancy for the tenants.

I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause based on the tenants failure to pay rent on time or make the necessary efforts to ensure that a third party paid their rent on time. The tenant has not made an application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. The tenant has not paid the outstanding rent nor provided any acknowledgement from a third party regarding the payment of that rent in a timely fashion.

In accordance with section 47(5) of the *Act*, the tenant's failure to take action by paying the rent or disputing the notice to end tenancy within ten days led to the end of his tenancy on the effective date of the notice. As the tenants have not vacated the rental unit in accordance with the Notice to End Tenancy, I find the landlord is entitled to an Order of Possession (dated January 31, 2016)

I accept this uncontested evidence offered by the landlord that rent for 3 months remains unpaid. I am issuing the attached monetary order that includes the landlord's application for \$1200.00 in unpaid rent. I find that the landlord is entitled to receive an order for \$400.00 in unpaid rent for the months of October, November, and December 2015 for a total of \$1200.00. The tenant does not dispute that this amount of rental arrears is outstanding. I am certain that the tenant will take the appropriate steps to ensure that the outstanding rental amount is paid in full.

The landlord testified that he will be unable to re-rent the rental unit for January 1, 2016. I have issued an Order of Possession dated January 31, 2016. Therefore, it is incumbent on the tenants to pay January 2016 rent. In consideration of those circumstances, I grant an Order of Possession dated January 31, 2016 and a monetary order including the amount of \$1200.00, the amount of the rental arrears.

Conclusion

I grant the landlords an Order of Possession to be effective January 31, 2016 at one p.m. If the tenant does not vacate the rental unit by the date required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlords as follows:

Rental Arrears for October 2015	\$400.00
Rental Arrears for November 2015	400.00
Rental Arrears for December 2015	400.00
Total Monetary Award	\$1375.00

The landlords are 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: December 31, 2015

Residential Tenancy Branch

