



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, OPC, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit / pet deposit - Section 38;
4. An Order to recover the filing fee for this application - Section 72

I accept the landlord's evidence that despite the respondent having been served with the application for dispute resolution and notice of hearing by *registered mail* in accordance with Section 89 of the Residential Tenancy Act (the Act) the respondent did not participate in the conference call hearing. The landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the respondent in this matter a tenant?

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

I have benefit of a copy of a tenancy agreement. The tenancy began April 15, 2011. The rent of the tenancy is \$1600.00 per month and the landlord holds a security deposit and a pet damage deposit in the sum of \$1600.00.

The tenancy agreement is between the landlord, applicant MG, and 4 individuals - of which 2 of them - AL and TL are named as co-applicants in this matter alongside the

landlord. The landlord's agent testified the respondent purportedly has a verbal tenancy agreement with the tenants of the written agreement. The landlord's agent explained that effectively the tenants of the written agreement acquired a roommate to share the rent. The landlord provided a receipt for the payment of \$300.00 by the respondent dated September 29, 2015, for *rent*. The respondent has since not paid their share toward the rent and currently still resides in the unit.

The landlord's agent testified the respondent is an *occupant*. The agent submitted that in November 2015, on behalf of the landlord and in conjunction with one of the tenants, issued the respondent a 1 Month Notice to End for Cause and on December 09, 2015 a 10 Day Notice for Unpaid Rent. The landlord claims the respondent has not paid rent for December 2015 and January and February 2016 in the sum of \$1350.00.

Analysis

Based on the landlord's undisputed evidence, I find the tenants to the written agreement for the tenancy improperly have been named as applicants in this matter along with the landlord. In the absence of any party other than the landlord's agent I have not received sufficient evidence to establish an oral tenancy exists between the tenants of the written agreement and the respondent in this matter.

The landlord's agent refers to the respondent as an *occupant*. I find that an occupant is an individual living in a unit with the tenant's consent and with or without the landlord's consent, but who has not been accepted by the landlord as a *tenant, co-tenant or sub-tenant*. Under such circumstances the individual can be said to be an occupant with the landlord accepting payment for accommodation strictly for *use and occupancy*, and not as rent. In this matter, I find the landlord clearly accepts the respondent as a tenant as there is no evidence the landlord has accepted payment from the respondent other than as a portion of the *rent*. In the absence evidence to the contrary, I find the landlord's evidence is that the respondent is a tenant of applicant MG – the landlord to the written agreement - and is not an occupant.

The landlord cannot end the tenancy for one tenant without ending the tenancy for all tenants to the tenancy. I find no evidence the remaining tenants of the rental unit are named as respondents in this matter or have been served with the landlord's application seeking to end the tenancy. I find it highly unlikely the other tenants know their tenancy may be in jeopardy as a result of the landlord attempting to end the tenancy. As a result, I find that the landlord cannot rely on their application to end occupation for solely the respondent of their application, and I must **dismiss** the landlord's application in this regard, *with leave to reapply*.

In respect to the landlord's monetary claim for unpaid rent the landlord seeks a monetary order for unpaid rent for the months of December 2015 and January and February 2016. In this matter the landlord seeks all the unpaid rent from one of the tenants. However, it must be known that all tenants are jointly and severally responsible for rent of the tenancy and, if necessary, the landlord is at liberty to apply to recover unpaid rent from the other tenants. I am satisfied that a portion of the overall rent has not been satisfied and the landlord is entitled to all the rent owed. Therefore I grant the landlord a monetary order for the unpaid rent for \$1350.00. The landlord is entitled to recover the filing fee for a total award to the landlord in the amount of \$1400.00.

Conclusion

The landlord's application for an Order of Possession is **dismissed**, with leave to reapply.

I grant the landlord a Monetary Order under Section 67 of the Act for the amount of **\$1350.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 11, 2016

Residential Tenancy Branch

