



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The landlord originally sought an order of possession for unpaid rent, monetary orders for unpaid rent and for damage or loss under the Act, regulation or tenancy agreement, authorization to retain all or part of the tenant's security deposit, and recovery of the filing fee.

Over the course of the hearing the landlord withdrew his requests for monetary orders and the landlord and tenant advised that they would attempt to negotiate a new tenancy if their current tenancy was terminated.

One of the named tenants and the landlord attended the teleconference hearing. Both parties were given the opportunity to provide affirmed testimony, to refer to the evidence that had been submitted, to make submissions, and to ask questions.

Service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), the Application for Dispute Resolution (the "Application") and documentary evidence was considered. The landlord testified that he handed copies of these materials to the tenant at the door of the rental unit and asked him to give the other named parties their copies. The tenant confirmed that the other parties were still residing in the rental unit at that time and that they all received these materials.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The tenant confirmed that he received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 25, 2016 (the "10 Day Notice") on that same day. He further agreed that the 10 Day Notice had an effective date of December 12, 2016. At the hearing he advised that all tenants and occupants had vacated the rental unit.

The written tenancy agreement was not in evidence. However, the landlord and tenant agreed that the tenancy began approximately three years ago, and that the tenant who was participating in the hearing, his brother, and one female tenant were signatories to the agreement. A security deposit in the amount of \$600.00 was paid at the beginning of the tenancy, which the landlord has since agreed he continues to hold, as set out below. The monthly rent was \$1,200.00, payable on the first of each month. The landlord testified that the written agreement did not allow for an additional charge for additional occupants.

It was further agreed that the initial female later left, and that another woman was substituted for her on the written agreement. The landlord testified that at this point he and the departing female tenant agreed that he would keep "her portion" of the security deposit (\$200.00) to cover the cost of removing things she had left behind. The landlord was advised during the hearing that, pursuant to s. 38, a security deposit should not be refunded until the end of the tenancy. In his Application the landlord had originally claimed \$200.00 for replenishment of the security deposit. He subsequently withdrew this claim and confirmed that he considers that he still holds the whole of the original security deposit in the amount of \$600.00

The landlord and tenant also agreed that, after the second female tenant left, two other females moved in. They did not sign the written tenancy agreement. The landlord agreed with the tenant that the two new women could occupy the unit on the condition that an additional \$200.00 was paid for a fourth occupant.

The landlord was advised that unless the tenancy agreement allows for an additional charge for additional occupants, the rent cannot be increased in this manner.

It was also undisputed that for the months of November and December of 2016, and for January of 2017, the testifying tenant and his brother both paid 400.00 toward the monthly rent, but that one of the female tenants paid only \$350.00 and the other did not pay anything.

The tenant advised that although he and his brother and both of the new female occupants had vacated the rental unit, there was some concern that the women might wish to return.

Over the course of the hearing the landlord withdrew his claims for monetary relief.

Analysis

A landlord cannot raise the monthly rent when another person moves in to the rental unit unless this is contemplated by the tenancy agreement or a new agreement is entered. Accordingly, I find that the monthly rent remained \$1,200.00. However, it was agreed that only \$1,150.00 of the \$1,200.00 due was paid for November – January, inclusive. There was in other words a shortfall each of these months.

A landlord is authorized by s. 46 of the Act to end a tenancy for unpaid rent by delivering a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Section 46(5) provides that if a tenant does not pay the amount owing or apply to dispute the 10 Day Notice within 5 days of receipt, the tenant is conclusively presumed to have accepted that the tenancy is ended on the effective date of the 10 Day Notice.

Section 55 of the Act authorizes me to grant the landlord an Order of Possession in the circumstances. Although the testifying tenant has advised that all tenants and occupants have vacated the unit, including himself, there is some concern that the female tenants who are not on the written agreement may return. For this reason the landlord did not wish to withdraw his application for an Order of Possession. Accordingly, and as rent has not been paid in full for January, 2017, I issue an Order of Possession effective two (2) days from the date of service.

The original tenancy that began in three years ago was terminated on December 12, 2016 – the effective date of the 10 Day Notice.

Conclusion

The landlord's application for an Order of Possession is successful.

I grant an Order of Possession to the landlord effective two (2) days after service. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The security deposit may be dealt with in accordance with the Act. The landlord and the testifying tenant may choose to apply the security deposit from the tenancy that ended on December 12, 2016 to the security deposit required under any new tenancy agreement they may negotiate.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Residential Tenancy Act*.

Dated: January 17, 2017

Residential Tenancy Branch

