



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: OPR, CNR, MNR, MNSD, & FF

Introduction:

This hearing dealt with cross applications by the parties. The tenant is seeking to have the ten day Notice to End Tenancy due to non-payment of rent set aside and for the tenancy to continue. The landlord is seeking an Order of Possession and a monetary claim related to the tenant's non-payment of rent. Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

Issues to be Determined:

Should the ten day Notice to End Tenancy be set aside? Has the landlord established a monetary claim related to non-payment of rent due to breach of contract by the tenant?

Introduction:

This tenancy began on May 1, 2008 for the monthly rent of \$650.00. The tenant originally entered into a verbal tenancy agreement with the landlord for herself; however, felt that she would be better off with a roommate. The landlord agreed to the roommate; however, submitted that the tenancy agreement was only with the tenant.

The tenancy ran into difficulties from the start. The roommate and the tenant were unable to pay the first month's rent or the security deposit in full and have remained in default on the rent since. The tenant submits that the roommate has failed to pay her share of the rent and vacated the rental unit in August 2008. The tenant submitted that she has been trying to catch up with the rent throughout the tenancy. The tenant does not believe that she should be responsible for the portion of the rent that her roommate did not honour.

The landlord submitted that he has worked with the tenant for months to have the outstanding rent paid; however, he stated that the tenant has never maintained the repayment schedules which she made. On November 20, 2008 the landlord served the tenant with a ten day Notice to End Tenancy due to non-payment of rent.

As of the date of this hearing the outstanding rent totals \$1,440.00 including non-payment of rent for December 2008. The tenant stated that she has not paid the December 2008 rent for fear that she will be evicted.

Analysis:

I accept the evidence of the landlord and the tenant that the original verbal tenancy agreement was only with the tenant named in this application. However, I note that even if I found that the tenant and her roommate were co-tenants, they would both be jointly and severally responsible for the outstanding rent. This means that the landlord can recover the full amount of debt or damages from either of the tenants. It is up to the tenant and her roommate to apportion among themselves the amount owing to the landlord.

I accept that the tenant was served with a ten day Notice to End Tenancy due to non-payment of rent and has been unable to pay the outstanding amount owed. I accept that the tenant is in breach of the tenancy agreement and *Act* due to her failure to pay the rent and that the landlord is entitled to an Order of Possession on this basis. I deny the tenant's application to set aside the Notice to End Tenancy.

I also accept the landlord's evidence establishing a total of \$1,440.00 in outstanding rent to the end of December 31, 2008. I also grant the landlord's request to recover the \$50.00 filing fee from the tenant for his application. This results in a total outstanding balance of \$1,490.00.

I grant the landlord's request for a monetary Order for the sum of **\$1,490.00** comprised of the outstanding rent by the tenant. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

While the landlord is entitled to an Order of Possession the landlord agreed to provide the tenant more time before she must vacate the rental unit. However, the landlord requires that the tenant pay the amount owed for December 2008 of \$650.00 for "use and occupation only". The landlord agreed that if the tenant paid this sum by the end of the day on December 12, 2008 he would accept an Order of Possession effective December 31, 2008.

I will provide the landlord with two Orders of Possession. One Order of Possession will be effective **two (2) days** after it is served upon the tenant. This Order can be enforced if the tenant fails to pay the rent of \$650.00 for "use and occupancy" for December 2008.

The other Order of Possession will be effective **December 31, 2008 at 1:00 p.m.** This Order will be enforceable if the tenant has paid for "use and occupancy" of the rental unit for December 2008.

These Orders may be filed with the Supreme Court of British Columbia and may be enforced as an order of that Court.

Conclusion:

I have denied the tenant's application to set aside the ten day Notice to End Tenancy and dismissed her application. I have granted the landlord's application and provided the landlord with a monetary Order and Orders of Possession.

If the tenant pays \$650.00 for the "use and occupancy" of the rental unit for December 2008 she may remain in the rental unit until December 31, 2008. If the tenant fails to pay the \$650.00 for December 2008 then the landlord may enforce the 2 day Order of Possession.

If the tenant pays the sum of \$650.00 for the "use and occupancy" of the rental unit to the end of December 2008 then the monetary Order provided to the landlord should be adjusted to reflect the sum paid against it.

Dated December 12, 2008.

Dispute Resolution Officer