



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, OPC, MNR, MND, MNDC, MNSD, CNR, CNC, LRE, AS, FF

Introduction

This hearing dealt with cross applications. The landlord made an application for an Order of Possession for unpaid rent, an Order of Possession for cause, a Monetary Order for damage, unpaid rent, damages or loss under the Act, regulations or tenancy agreement, retention of the security deposit and recovery of the filing fee. The tenants made an application to cancel a *1 Month Notice to End Tenancy for Cause* and set conditions on the landlord's right to enter the rental unit. The male tenant made an application to cancel a *10 Day Notice to End Tenancy for Unpaid Rent* and to allow the tenant to assign or sublet the tenancy agreement. The tenant(s) sought recovery of the filing fee for both applications. The landlord and the male co-tenant appeared at the hearing. The male tenant was assisted by a friend of his.

The landlord testified that she had personally served the male co-tenant with the Landlord's Application for Dispute Resolution on May 13, 2009 and sent the female tenant a copy by registered mail on May 13, 2009 and provided a receipt as evidence. The male tenant testified that the female co-tenant had moved out of the rental unit April 20, 2009. The landlord testified that she was not aware the female tenant had moved out. The registered mail was not returned to the landlord as it was accepted by the male tenant.

Where a landlord serves a tenant with a Application for Dispute Resolution by registered mail, section 89 of the Act requires the landlord to send the registered mail to the address at which the tenant resides. Having heard the female co-tenant had vacated on April 20, 2009 I am not satisfied the female tenant was served with the landlord's



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application in accordance with the Act and I amend the landlord's application and accompanying Orders to name only the male tenant.

Issues(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent or cause?
2. Has the tenant established grounds to set aside the Notices to End Tenancy?
3. Has the landlord established an entitlement to compensation for damage, unpaid rent, and damage or loss under the Act, regulations or tenancy agreement?
4. Tenant's requests for authorization to assign or sublet and to restrict landlord's right to enter the rental unit.
5. Award of the filing fee(s).

Background and Evidence

Upon hearing testimony of both parties, I make the following findings. The landlord and female co-tenant entered a tenancy agreement October 1, 2007. In November or December 2008 the male co-tenant moved into the rental unit and the tenant signed the tenancy agreement although the date of signing is in dispute. Rent of \$755.00 is due on the 1st day of every month. A \$365.00 security deposit was paid on September 15, 2007. The landlord personally served the male tenant a *1 Month Notice to End Tenancy for Cause* on April 30, 2009. The landlord personally served the male tenant with a *10 Day Notice to End Tenancy for Unpaid Rent* on May 4, 2009 for failure to pay the rent when due. On May 6, 2009 the tenant paid the landlord \$300.00 and agreed to move out but requested money to move. The landlord gave \$200.00 back to the tenant to assist in moving costs; however, the tenant did not move out.

The tenant claimed that the rent was not paid because the female co-tenant left and took rent money with her. The tenant's representative did not refute that the tenant had to vacate; however, requested more time to do so. The tenant stated he would have



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money to move on May 27, 2009. The landlord consented to allow the tenant until May 27, 2009 at midnight to vacate the rental unit.

As the tenancy is about to end, the tenant's requests to assign and sublet were not explored further during the hearing. Nor was there a need to further discuss the 1 Month Notice to End Tenancy for Cause as there are sufficient grounds to end the tenancy for unpaid rent. The remainder of the hearing dealt with the landlord's request for compensation.

The landlord is seeking unpaid rent of \$655.00 for the rental unit for May 2009 and loss of rent of \$850.00 per month for the months of March, April and May 2009 for the rental unit located immediately below the rental unit (unit 209). It was the landlord's submission that the landlord lost tenants in unit 209 because of the bedbugs coming in the ceiling from the rental unit. The landlord submitted that the rental unit is heavily infested with bedbugs.

The tenant did not deny that there are bed bugs in the rental unit; however, it was the tenant's position that it cannot be proven irrefutably that either of the co-tenants are responsible for bringing bed bugs into the rental unit. The tenant's representative claimed that there is furniture in the lobby that may contain bed bugs and the building is known to have bed bugs.

The landlord refuted the tenant's position by stating that the pest control company inspected all of the suites surrounding the rental unit and none of them had bedbugs. The bedbugs in unit 209 were determined to come from the ceiling. The landlord provided documentation the pest control company that attended rental building as evidence for the hearing.



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Advance Pest Control stated that the rental unit could not be treated fully as the unit was not prepared for full treatment as per the preparation notice. Advance Pest Control noted that no activity of bed bugs was detected in units with the exception of unit 209 and the rental unit. The rental unit was noted as being heavily infested and cluttered by the pest control technician. The evidence submitted shows that the pest control company attended the property on three occasions in March 2009.

Analysis

Based on the evidence before me, including testimony of the parties, I am satisfied that the landlord has established that the tenant failed to pay rent when due and did not pay the full amount of rent within five days of receiving the 10 Days Notice. The tenant did not have the legal right to withhold rent from the landlord and one co-tenant taking the rent money from the remaining co-tenant is not basis to set aside the 10 Day Notice. Co-tenants are jointly responsible for ensuring the rent is paid in full. As the landlord consented to an Order of Possession for May 27, 2009 I provide such to the landlord with the landlord's copy of this decision. The landlord is also awarded unpaid rent of \$655.00.

A party making a claim for compensation has the burden to prove the claim, based on the balance of probabilities. The balance of probabilities is not the same standard normally associated to criminal activity which is proof beyond a reasonable doubt. Rather, the claimant must establish that it is more than 50% likely that an event occurred as indicated by the claimant. The party making a claim must also prove the quantum of the loss and that they did whatever was reasonable to minimize the loss.

In this case, I am satisfied that the bedbugs in unit 209 more than likely originated from unit 309. The evidence also indicates that the rental unit is cluttered and was not well prepared for bed bug treatment. The landlord also provided evidence that the tenants



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left unit 209 at the end of February 2009 because of bed bugs. However, the landlord's case is weak in substantiating the quantum of the loss. The landlord did not provide documentation to substantiate that the rent was \$850.00 in unit 209 whereas this documentation should have been readily available to the landlord. I also note that the tenants in unit 209 notified the landlord of the bed bug infestation January 1, 2009 yet there is a lack of evidence that the landlord inspected or treated the affected units until March 2009. Therefore, I find the landlord has failed to meet the criteria for establishing an entitlement to compensation from the tenant for loss of rent for unit 209.

I authorize the landlord to retain the security deposit and accrued interest in partial satisfaction of the rent owed to the landlord. I also grant the filing fee to the landlord. I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent	\$ 655.00
Filing fee	50.00
Less: security deposit and interest	<u>(372.12)</u>
Monetary order	<u>\$ 332.88</u>

The tenant did not pay a filing fee for one of the tenant's application and paid a filing fee for the other. I make no award to the tenant for the filing fee paid by the tenant.

The Monetary Order provided to the landlord must be served upon the tenant and may be filed in Provincial Court (Small Claims) to enforce as an Order of that court.

The Order of Possession must be served upon the tenant and may be filed in The Supreme Court of British Columbia to be enforced as an Order of that court.



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Conclusion

The tenant must vacate the rental unit no later than 11:59 p.m. on May 27, 2009 and the landlord is provided with an Order of Possession to serve upon the tenant.

The landlord is authorized to retain the tenants' security deposit and is provided with a Monetary Order for the balance owing of \$332.88.

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: May 21, 2009.

Dispute Resolution Officer