



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes: OPR, MNR, MNSD, CNL, FF

Introduction

This hearing was convened in response to cross-applications by the landlord and tenant pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

For the landlord:

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

For the tenant:

1. To cancel a 2 Month Notice to End Tenancy for Landlord's Use - Section 49;

Both parties appeared in the conference call hearing and participated with their submissions and testimony.

The tenant advised they are still residing in the rental unit but plan to vacate the unit at the end of April 2011 - the effective date of the Notice to End for Landlord's Use.

Issue(s) to be Decided

Is the landlord's 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

The tenancy began on September 01, 2008. Rent in the amount of \$1200 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$600 which the landlord still holds. The tenant was given a 2 Month Notice to End on February 16, 2011 with an

effective date of April 30, 2011. The tenant determined to dispute the notice – wanting for the notice to be made effective for a later date – but now has determined to vacate in accordance with the Notice to End for landlord's Use.

The landlord and tenant do not dispute that the tenant failed to pay rent in the month of March 2011 and on March 17, 2011 the landlord served the tenant with a Notice to End the tenancy for non-payment of rent. The tenant claims they paid half of the rent (\$600) on or about March 23, 2011 by depositing this amount in the landlord's bank account, but the tenant has not produced confirmation. The landlord now seeks an Order of Possession based on the 10 Day Notice to End as well as the rent arrears for March 2011. The landlord is conditionally agreeable to the tenants remaining in the rental unit to the end of April 2011. The tenant and landlord agree they can accommodate one another in this regard.

Analysis

Based on the testimony of the landlord and the tenant I find that the tenant has, effectively, abandoned their application disputing the landlord's Notice to End for landlord's Use and are not disputing the landlord's 10 day Notice to End for unpaid rent. Accordingly, the tenant's application **is dismissed** without leave to reapply and the landlord's 2 Month Notice to End is, therefore, upheld.

Resulting from the hearing, I find the tenant was served with a Notice to End tenancy for non-payment of rent and I find the notice to be valid. The tenant has not paid the outstanding rent and has not applied for Dispute Resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an **Order of Possession**. As the effective date of the Notice to end has elapsed, it is appropriate for the landlord to receive a two (2) day Order of Possession.

I also find that the landlord has established a monetary claim for **\$1200** in unpaid rent. The landlord is also entitled to recovery of the **\$50** filing fee, for a total entitlement of **\$1250**. The security deposit will be off-set from the award made herein.

Calculation for Monetary Order

Rental Arrears for March 2011	\$1200.00
Filing Fees for the cost of this application	50.00
Less Security Deposit and applicable interest <i>to date</i>	-602.50
Total Monetary Award	\$647.50

It must be noted that regardless of how this tenancy ends, a 2 Month Notice to End for Landlord's Use given by the landlord triggers the provisions of Section 51 of the Act – which, in part, states

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Accordingly, in compliance with the provisions of this Tenancy Agreement, the tenant is entitled to \$1200 compensation on or before April 30, 2011.

Conclusion

The tenant's application **is dismissed**, without leave to reapply.

I grant an Order of Possession to the landlord **effective 2 days from the day the tenant is served with the Order**. The tenant must be served with this Order of Possession. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order that the landlord retain the **deposit** and interest of \$602.50 in partial satisfaction of the claim and **I grant** the landlord an order under Section 67 of the Act for the balance due of **\$647.50**. The landlord's Order is effectively reduced by an amount already paid. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: March 31, 2011

Residential Tenancy Branch