

## **DECISION**

### **Dispute Codes:**

Tenant's application: CNC; MNDC; LRE

Landlords' application: OPR; MNR; FF

### **Introduction**

This Hearing was convened to consider cross applications. The Tenant seeks the cancel a One Month Notice to End Tenancy for Cause; compensation for damage or loss under the Act, regulation or tenancy agreement; and an Order suspending or setting conditions on the Landlords' right to ender the rental unit.

The Landlords seek to end the tenancy with respect to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities; an Order of Possession; a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Tenant testified that she mailed the Notice of Hearing documents, by registered mail, to the corporate Landlord at its place of business, on October 6, 2011. The Tenant stated that she also left copies of the documents under the Landlord's door on October 4, 4011 at 5:45 p.m. The Tenant provided the tracking number for the registered mail documents. Based on the affirmed testimony of the Tenant, I find that the corporate Landlord was served with the Tenant's Notice of Hearing documents in accordance with the provisions of Section 89(1)(c) of the Act.

The Tenant testified that she left copies of her documentary evidence under the Landlord's door on October 27, 2011, late in the afternoon. Rule 3 of the Residential Tenancy Branch Rules of Procedure requires that evidence must be provided to the other party and to the Residential Tenancy Branch as soon as possible, but in any event at least 5 clear days before the date of the Hearing. The Information sheets provided to both parties with the Notice of Hearing package also set out the required time frames for service of documents. The Tenant did not provide the Landlords with copies of her evidence within the allowed time frame and therefore her documentary evidence was not considered during the Hearing. The Tenant was invited to provide oral testimony with respect to those documents.

The Landlord MC testified that he served the Tenant with copies of the Landlords' Notice of Hearing documents and documentary evidence, by handing the documents to the Tenant at the rental unit on October 11, 2011 at 9:45 a.m., with a witness present.

The Tenant acknowledged receipt of the Landlords' Notice of Hearing documents and documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

### **Preliminary Matter**

The Tenant has applied to cancel a 2 Month Notice to End Tenancy for Cause, an Order restricting or suspending the Landlords' right to enter the rental unit, and compensation for damage or loss. I explained to the parties that the Residential Tenancy Rules of Procedure, Rule 2.3, states that for disputes to be combined on an application they must be related. I find that that the Tenant's monetary claim is not sufficiently related to the main issue, which is to cancel the 2 month Notice. For this reasons, I dismissed that portion of the Tenant's application **with leave to reapply**.

### **Issues to be Decided**

- Are the Landlords entitled to an Order of Possession for unpaid rent and a Monetary Order for unpaid rent for the month of October, 2011?
- Should a Notice to End Tenancy for Cause be cancelled?
- Should the Landlords' right to access the rental unit be suspended or limited?

### **Background and Evidence**

The Landlords provided a copy of the tenancy agreement in evidence. This tenancy began on April 1, 2011. Monthly rent is \$570.00 due on the first day of each month. The Tenant paid a security deposit in the amount of \$285.00 on March 22, 2011.

The Landlord MC testified that the Tenant did not pay rent when it was due on October 1, 2011, and therefore he issued a 10 Day Notice to End Tenancy on October 2, 2011. He testified that he served the Tenant with the Notice by attaching it to the Tenant's door on October 2, 2011 with a witness present. The Landlords provided a copy of the Notice to End Tenancy and Proof of Service document in evidence.

The Landlord MC stated that October's rent remains unpaid. The Landlord asked to set off the security deposit against the unpaid rent.

The Tenant testified that she did not file an application to cancel the Notice to End Tenancy for Unpaid Rent because she spoke with an Information Officer at the Residential Tenancy Branch who advised her that it was not necessary for her to file

such an application. The Tenant testified that she is going to pay rent as soon as she can, but that there was a problem with the mail delivery since October 19, 2011, and therefore she has not received her cheques.

### **Analysis**

Section 26 of the Act requires a tenant to pay rent when it is due. Section 46 of the Act provides that a landlord may end the tenancy if rent is unpaid on any day after the day it is due by issuing a 10 day notice to end the tenancy. Sections 46(4) and (5) of the Act states:

- (4) Within 5 days after receiving a notice under this section, the tenant may
  - (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
  - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit to which the notice relates by that date.

Based on the affirmed testimony of both parties, I find that the Landlord MC posted the 10 Day Notice to End Tenancy on the Tenant's door on October 2, 2011. Section 90 of the Act deems service in this manner to be effected 3 days after posting the Notice. Therefore, I find that the Tenant received the Notice on October 5, 2011. The Tenant did not pay the outstanding rent by October 10, 2011, nor did she file an application to dispute the Notice. Therefore, pursuant to the provisions of Section 46(5)(a) of the Act, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on October 15, 2011. The Tenant is overholding and I find that the Landlords are entitled to an Order of Possession **effective 2 days after service of the Order upon the Tenant.**

The Tenant has not paid rent for October, 2011, and I find that the Landlords are entitled to a monetary award for unpaid rent in the amount of \$570.00.

The Landlords have been successful in their application and are entitled to recover the cost of the filing fee from the Tenant.

Pursuant to the provisions of Section 72 of the Act, the Landlords may apply the security deposit towards partial satisfaction of their monetary award. No interest has accrued on the security deposit.

I hereby provide the Landlords a Monetary Order, calculated as follows:

Unpaid rent	\$570.00
Recovery of filing fee	\$50.00
Less security deposit	<u>-\$285.00</u>
TOTAL	<b>\$335.00</b>

The Landlords have been successful in their application to end the tenancy and therefore it is not necessary to consider the Tenant's application to cancel a One Month Notice to End Tenancy for Cause. This portion of the Tenant's application is dismissed.

The tenancy has ended and therefore I dismiss the Tenant's application for an Order limiting or suspending the Landlords' right to access the rental unit.

### **Conclusion**

The Tenant's application for compensation for damage or loss is dismissed **with leave to reapply**.

The remainder of the Tenant's application is dismissed **without leave to reapply**.

I hereby provide the Landlords an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlords a Monetary Order in the amount of **\$335.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: October 28, 2011.

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Residential Tenancy Branch