

# Dispute Resolution Services

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

## **Decision**

**Dispute Codes:** CNR ERP MNR OPR RR FF

## **Introduction**

This matter dealt with applications by both the landlord and the tenant.

The landlord's application seeks an order of possession, a monetary order for unpaid rent and to recover the filing fee for the cost of this application.

The tenant's application seeks to cancel a Notice to End Tenancy for unpaid rent, an order for emergency repairs and a rent reduction.

Both the landlord and the tenant appeared at the hearing and were afforded the opportunity to present evidence. I have considered their oral testimony as well as the written submissions which were received prior to the hearing.

## **Issue(s) to be Decided**

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent, and if so, in what amount?

Is the tenant entitled to have the Notice to End tenancy for unpaid rent, cancelled?

Is the tenant entitled to an order to have the landlord complete emergency repairs?

Is the tenant entitled to a rent reduction, and if so, in what amount?

## **Background and Evidence**

The evidence of tenant at the hearing is as follows:

- this tenancy began on March 28, 2008
- the tenant alleges that the rental unit has a defective furnace, and that he notified the landlord in writing of the defect near the end of September
- the tenant also states that he was not served the application for dispute resolution and the notice of hearing and that he was out of town on the date it was allegedly served
- the tenant acknowledges receipt of a 10 Day Notice to End Tenancy for unpaid rent on November 11, 2008
- the tenant states that he paid the November rent as well as an amount for a previous order totalling \$2587.00 on November 19, 2008. The evidence of the tenant is that this was paid in cash and that it was placed in the landlord's mailbox by his wife
- the tenant states that the December rent was also paid in cash on November 28, 2008
- the tenant denies leaving a voice mail on the landlord's phone on September 12, 2008, a transcript of which has been supplied by the landlord

The evidence of the landlord at the hearing is as follows:

- the Notice to End Tenancy for unpaid rent was served in person to the tenant on November 11, 2008
- the application for dispute resolution and the notice of hearing were served in person on the tenant at the door of the rental unit at about 9:30 am on November 27, 2008. The landlord states that the tenant's vehicle was also in the driveway at that time
- the landlord denies that she ever received a written notice from the tenant that the furnace was defective
- the landlord denies that she never received an envelope containing \$2587.00 as alleged by the tenant and that no rent has been paid for November
- the landlord seeks a monetary order and an immediate order of possession.
- the landlord has supplied a transcript of a tape message left by the tenant on September 12, 2008.

## **Analysis**

I have listened to the evidence of both parties and it is very obvious that one of the parties is failing to tell the truth. The evidence in almost all aspects is contradictory and the tenant's version of the events leaves much doubt as to their reality. The transcript of the September 12, 2008 phone message greatly diminishes the credibility of the tenant when he uses a phrase such as *"and not only will you not get your rent money, we'll be living here for as long as we want for free"*. The transcript also contains numerous obscenities and personal slurs against the landlord and her daughter.

I find that the evidence of the tenant is not credible in regards to the alleged payment of the rent. Given the history of disputes between these two parties, both parties are well versed in their obligations regarding service and payment of rent. I do not accept the tenant's testimony that the amount of \$2587.00 was left in an envelope in the landlord's mailbox, as there is no evidence to support such a story. The tenant seems to find an excuse to counter the landlord's testimony, but he lacks credibility. The tenant's statement in the telephone message demonstrates a deliberate effort to avoid the obligation of paying rent and attempting to occupy the rental unit rent free. I find that the tenant has not paid the rent for the month of November, 2008 in the amount of \$1200.00.

I accept the evidence of the landlord that the notice of hearing the application for dispute resolution were properly served on November 27, 2008. I also accept that the landlord has not been notified of any furnace defect, as the tenant has failed to provide any evidence of an actual defect or a copy of the notice he alleges he sent to the landlord. I find the evidence presented by the landlord to be credible.

## **Conclusion**

I find that the landlord is entitled to a monetary order in the amount of \$1200.00 for November 2008 as well as the \$50.00 filing fee for the cost of this application and I grant the landlord an order in the amount of \$1250.00. The order must be served upon the tenant. The order may be filed with and enforced as an order of the Provincial Court of British Columbia.

I also find that the rent has not been paid, and that 10 Day Notice to End tenancy for unpaid rent as issued on November 11, 2008 is a valid notice. The tenant has not vacated the rental unit and as such the landlord is entitled to an immediate order of possession. The order must be served upon the tenant. The order may be filed with and enforced as an order of the Supreme Court of Canada.

I dismiss all parts of the tenant's application.

Dated: December 5, 2008