



Dispute Resolution Services

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



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DECISION

Dispute Codes:

CNR, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with a cross- application by the tenant and landlord.

The landlord's application is for an order of possession due to unpaid rent, a monetary order to recover rental arrears and inclusive of recovery of the filing fee associated with this application, and an order to retain the security deposit in partial satisfaction of the monetary claim.

The tenant's application is to cancel the Ten (10) day notice to end tenancy for unpaid rent, issued personally by the landlord on January 7, 2009, effective January 17, 2009.

Both parties attended and each had one another's evidence, and were under solemn affirmation to give truthful testimony.

During the hearing, the landlord orally requested an order of possession, and the tenant stated she wants to move , and can do so immediately, and was not opposed to the landlord receiving an order of possession. And, on this basis and agreement between the parties, this decision will only deal with matters pertaining to the monetary claim.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on August 1, 2003. Rent in the amount of \$700 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord did not collect a security deposit from the tenant.

According to the landlord's testimony,

1. The tenancy was going well until 2007.
2. By September 2007 the tenant was approximately \$10,000 in rent arrears.
3. The tenant persuaded the landlord to let her stay on the basis she would pay her arrears as well as her ongoing rent.
4. Over the next 12 months, to August 2008, the landlord accepted cash in the amount of \$6900 in four instalments of

- \$2000 November 2007

- \$2200 February 2008

- \$1500 March 2008

- \$1200 August 2008 **for total rent paid of \$6900**

5. The landlord claims the tenant still owed \$1500 in August 2008, for the

Preceding 12 month period (12 months x \$700 = \$8400 - \$6900 = \$1500)

6. The landlord is claim on application is for \$4200 for rent arrears, at \$700 per month for the months of August to December 2008, and for January 2009.

The landlord claims, and the tenant agrees, that the tenant has also not paid rent for February 2009. The landlord's total revised **monetary claim is**

\$4900.

7. The landlord's claim makes no mention of the \$1500 still owed in August 2008, nor any mention of the \$10,000 owed up to September 2007.
8. All monies ever paid by the tenant since 2003 have been in cash, and he has never issued a receipt for any cash paid. There have never been witnesses to any rent payment.
9. The reason the tenant has been able to pay large instalments of cash periodically is that the tenant has told him she and her boyfriend have a marijuana grow operation.
9. The landlord's co-attender in the hearing describes the landlord as a, " the most generous and honest man I've ever met", and claims to know him for 13 years. She has never met the tenant.

According to the tenant's testimony

1. She has always paid her rent, on time, since 2003.
2. She has always paid her rent in cash, and has never received, nor requested a receipt for her rental cash payments. There have not been witnesses to any of her rent payments.
3. She works in a retail store and brings home approximately \$1500 to \$1600 per month, and does not have access to additional income.
4. She received the Ten (10) day notice to end for unpaid rent on January 7, 2009, and was "shocked" to receive it and confused as to why the landlord was requesting any money in an accompanying "polite" letter which simply stated she was in serious arrears, that she owed \$4200, and to please contact the landlord to make payment arrangements.

5. She has only recently withheld her rent for February 2009 (\$700) due to the uncertainty of this action, and is prepared to pay it forthwith.

Analysis

In the absence of other evidence, of any sort, the testimony in this hearing is, at best, contrasting and unsupported.

The portion of the landlord's claim against the security deposit is not supported by the existence of a security deposit.

In particular, the landlord has not provided sufficient or credible evidence to prove the monetary claims in his application, and therefore, I dismiss his monetary claim in its entirety.

I find that the tenant is entitled to the recovery of her filing fee, and is permitted to withhold this amount of **\$50** from her rent.

I decline to grant the landlord recovery of the filing fee.

Based on the above facts and in agreement by the landlord and tenant I find that the landlord is entitled to an order of possession.

Conclusion

I grant an order of possession to the landlord. 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.

Dated February 11, 2009