

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes:

OPR, CNR, MNR, MNSD, OLC, RR, FF

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for an order of possession and a monetary order for unpaid rent and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her monetary claim.

The tenant applied for an order to cancel the notice to end tenancy and for an order for the landlord to comply with the *Act* and allow the tenant to reduce rent due to a bed bug problem.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to an order of possession? Does the tenant owe the landlord for the balance of rent that was not paid in full and if so, in what amount?

Background and Evidence

The tenancy started on September 01, 2008, on a month to month basis. Rent is \$400.00, due on the first day of each month. The tenant stated that he paid a security deposit of \$200.00, prior to moving into the rental unit. The tenant did not pay the entire amount of rent each month and accumulated a debt of \$400.00 to the landlord. On April 04, 2009, the landlord issued a ten day notice to end tenancy.

Landlord's Application

The landlord stated that during the first month of the tenancy, the tenant complained of the presence of bed bugs. The landlord provided the tenant with bug spray and agreed to a \$50.00 reduction in the rent for that month. Accordingly, the tenant paid \$350.00 for September 2008. For October 2008, the tenant paid the full rent of \$400.00.

However, since then the tenant paid rent in various amounts ranging from \$320.00 to \$350.00. The tenant has also not paid rent for May 2009. The tenant made rent payments in cash and the landlord issued a receipt for each payment and has filed a copy of these receipts into evidence. The landlord stated that the tenant would promise to pay the difference each month but never did and sometimes avoided the landlord by not opening the door.

The landlord has submitted a written statement that has also been filed into evidence by the tenant, which lists the amounts of rent paid by the tenant and the amounts owed by the tenant. The tenant did not dispute amounts listed on the written statement and agreed that he owed rent for May 2009.

The landlord is claiming the following:

	Month	Rent paid	Rent owed
1.	November 2008	\$325.00	\$75.00
2.	December 2008	\$325.00	\$75.00
3.	January 2009	\$330.00	\$70.00
4.	February 2009	\$350.00	\$50.00
5.	March 2009	\$350.00	\$50.00
6.	April 2009	\$320.00	\$80.00
7.	May 2009	\$0.00	\$400.00
	Total owed		\$800.00

The landlord has also applied for an order of possession, to recover the filing fee of \$50.00 and to retain the security deposit in partial satisfaction of her claim.

Tenant's Application

The tenant confirmed that he entered into a tenancy agreement for a monthly rent of \$400.00. During the first month of September 2008, the tenant stated that he found bed bugs in a couch that was left in the rental unit by the previous tenant. He informed the landlord about the problem and disposed of the couch. The landlord provided the tenant with bug spray and a reduced rent for the month of September (\$350.00).

The tenant stated that the bug problem is ongoing but manageable. He stated that the landlord agreed to a reduced rent on an ongoing basis. The tenant did not file any evidence to support his claim of reduced rent.

The tenant is applying for a rent reduction and to set aside the notice to end tenancy.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim must fail.

In this case, the tenant stated that the landlord had agreed to a lower rent in the amount of \$350.00 but the landlord denied this. The tenant did not file any written evidence to confirm this amended arrangement. In addition, the tenant paid \$400.00 which is the full amount of rent in October 2009 which supports the landlord's testimony that the rent was not lowered to \$350.00 for the month of September 2009 only, and not on an ongoing basis. In the absence of evidence to support the tenant's claim of an agreement between both parties to reduce the rent to \$350.00, I find that the rent is \$400.00 per month, as per the terms of the written tenancy agreement.

Section 26 of the *Residential Tenancy Act*, states that a tenant must pay rent when it is due under the tenancy agreement. I find that the tenant was served with a notice to end tenancy for non-payment of rent and failed to pay the outstanding rent.

Therefore the landlord is entitled to an order of possession. The tenant must be served with the 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 find that the landlord has filed evidence to support her claim of \$400.00 for rent owed for November 2008 to April 2009. The tenant agreed that he has not paid rent for May 2009 (\$400.00). Therefore I find that the landlord has established a claim of \$800.00.

The landlord has proven her case and is therefore entitled to the filing fee in the amount of \$50.00.

I order that the landlord retain the security deposit of \$200.00 and interest of \$1.25 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$648.75. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant. I also grant the landlord a monetary order in the amount of **\$648.75**.

Dated May 21, 2009.

Dispute Resolution Officer