

## **DECISION**

### **Dispute Codes:**

OPR, OLC, MNR, ERP, RP, RR, MNDC, MNSD, FF

### **Introduction**

This hearing was convened in response to an application by the tenant and an application by the landlord. The **tenant** sought:

- For the landlord to make emergency repairs,
- For the landlord to make repairs to the unit,
- For landlord to Comply with the Act.
- Filing fee for this application.

The landlord sought

- An Order of Possession effective May 15, 2010 pursuant to a 10 Day Notice to End tenancy for unpaid rent.
- Monetary Order for the unpaid rent, and to retain the security deposit in partial satisfaction of the unpaid rent.
- Filing fee for this application

On the basis of the evidence presented at that hearing and prior submissions, a decision has been reached. All of the evidence and testimony was carefully considered. Both parties attended the conference call hearing and were given a full opportunity to present evidence and make submissions as well as attempt to settle their dispute to their satisfaction. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

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

Should the landlord be ordered to make repairs to the unit?

Should the landlord be ordered to make emergency repairs?

Is the 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 parties' undisputed evidence is that the tenancy began on November 01, 2005. Rent in the amount of \$1600 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 \$750.

The tenant's testimony is that throughout the years of their tenancy the landlord has not maintained the yard work of the residential property and that the tenancy agreement was mute on this matter. Over the years of the tenancy the tenant has maintained the exterior of the residential property, and more recently has had to pay a contractor to do the work. The tenant provided evidence of the purchased maintenance work but failed to provide the same evidence to the landlord in compliance with section 88 of the Act. Nonetheless, the landlord acknowledged that they were not involved in the exterior maintenance and it was their belief that the tenant would undertake the maintenance of the exterior property. The tenant also testified that subsequent to the outset of the tenancy they notified the landlord of a rat infestation which has persisted throughout the remaining years of the tenancy. The landlord recalls the tenant notifying them one year after the start of the tenancy (2006) that they had rats, and she determined that the tenants would take care of the problem themselves and that it was "under control". The tenant has not made an application for monetary compensation; however, the parties turned their minds to compromise and the landlord agreed to compensate the tenant for their years of yard work and having to deal with the rat infestation for almost 3 ½ years.

The tenant further testified that they are in the midst of vacating the residential property and plan to move out no later than May 15, 2010.

The landlord's testimony is that the tenant failed to pay all rent in the month of February 2010 and did not pay rent for March 2010 and on March 24, 2010 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant further failed to

pay rent in the month of April and May 2010. The quantum of the landlord's monetary claim is for the unpaid rent to May 15, 2010, totalling **\$5100**. The landlord further seeks an **Order of Possession** effective May 15, 2010.

However, during the course of the hearing, the parties reached an agreement to settle portions of their respective applications, and any monetary claim of the tenant, on the following conditions; and, the parties agreed to mutually abide by their settlement conditions to their mutual satisfaction for all time, and that I record and factor the agreed monetary amounts in an Order.

1. The landlord will deduct **\$2550** from their claim in compensation to the tenant for past yard work, and loss of *quiet enjoyment* of the property due to a rat infestation.

### **Analysis**

Based on the testimony of both parties, on the preponderance of the evidence, and on the parties' agreement, **I find** that 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 all of the above facts I find that the landlord is entitled to an **Order of Possession**.

As for the monetary order, I find that the landlord has established a claim for **\$5100 for unpaid rent and has verbally agreed to amend their claim to \$2550**. The landlord's application has merit and is therefore entitled to recovery of the \$50 filing fee, for a total entitlement of **\$2600**.

In light of the facts and evidence in this matter I find it is not necessary for me to order that the landlord make repairs to the unit or to make emergency repairs and therefore I

decline to order the landlord to comply with the Act. These portions of the tenant's application are **dismissed** without leave to reapply. As the tenant agreed to settle any and all of their monetary claims the tenant is not entitled to recover their filing fee.

### **Conclusion**

**I grant** an Order of Possession to the landlord **effective May 15, 2010**. 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 \$776.55 in partial satisfaction of their claim monetary entitlement, and I grant the landlord an order under Section 67 of the Act for the balance due of **\$1823.45**. 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*.