

## **DECISION**

### **Dispute Codes:**

CNR, CNC, OLC, MNDC, ERP, RR, PSF, FF

### **Introduction**

This hearing was convened in response to an application by the tenant.

The tenant sought;

- Cancellation of a 10 Day Notice for Unpaid Rent (Notice to End)
- Cancellation of a 1 Month Notice to End Tenancy for Cause
- Money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.
- For the landlord to comply with the Act
- Make emergency repairs
- Provide services or facilities required by law
- Allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided
- Recover the filing fee.

Both parties appeared in the conference call hearing and participated with their submissions and testimony. The tenant advised they are still residing in the rental unit.

The landlord orally requested an Order of Possession effective forthwith.

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

Is the notice to end tenancy valid?

Should the Notice to End be cancelled?

Is the landlord entitled to an Order of Possession? ***If not:***

Should the landlord be ordered to comply with the Act, make emergency repairs, provide services required by law?

Should the tenant be allowed to reduce rent for repairs, services or facilities agreed upon but not provided?

### **Background and Evidence**

The testimony of the landlord and the tenant is that the tenancy is based on rent in the amount of \$1000 per month payable in advance on the first day of each month. The tenant failed to pay rent in the month of December 2009 and also owed the landlord a quantum of rental arrears. The tenant further failed to pay rent in the month of January and February 2010 and the landlord served the tenant with a notice to end tenancy for non-payment of rent on February 26, 2010. The tenant also has not paid rent for March or April 2010. The quantum of rent owed to the landlord is in excess of \$5000 and may be the subject of a future application by the landlord.

The landlord testified that on March 06, 2010 he also served the tenant with a One (1) month notice to end Tenancy for Cause. The tenant claims he was given the Notice to end on April 10, 2010.

The tenant does not dispute that the rent has not been paid and does not possess any proof that it has been paid and does not hold an order from an Arbitrator allowing them to keep the rent, or that the tenant held back the rent, with prior notice to the landlord, for the cost of emergency repairs for which the tenant has provided receipts.

The tenant testified that the rental unit has not had a functioning furnace since mid December 2009 and discussions with the landlord did not result in the furnace being fixed or replaced. The landlord and tenant agreed that early on in the problem they had a conversation respecting a remedy involving the landlord purchasing space heaters for the tenant to provide heat; but, this plan did not advance due to the parties' inability to agree. The tenant claims that as he already had some space heaters, he has utilized them since mid December 2009 – at a cost for additional electrical utility, for which the tenant is responsible. The tenant also purports that the roof of the rental unit leaks and requires maintenance. Also, the back deck of the rental unit is purported to need replacing.

The hearing heard from the tenant that they have been billed for electrical usage in excess of the norm, in the approximate amount of \$7 per day. The hearing has not been provided with any supporting evidence in this regard; but, the landlord agreed to the tenant receiving reasonable compensation for electrical usage incurred for heat, which the tenant can use to offset the rental arrears. The landlord testified he does not dispute reasonable compensation being ordered.

### **Analysis**

Based on the testimony of the landlord and the tenant 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 despite having applied for dispute resolution to dispute the notice to end the tenant has only confirmed that the rent has not been paid and does not have evidence upon which to dispute the landlord's claims.

Therefore the tenant's application to cancel the Notice to End for non payment of rent **is hereby dismissed** without leave to reapply. The landlord's Notice to end is upheld. As a result, **I find** that the landlord is entitled to an **Order of Possession** and that the tenancy will end. As I have made this determination, I decline to consider the validity of the One month Notice to End.

As I have determined that the tenancy is ending, I decline to consider the portion of the tenant's application pertaining to a surviving tenancy and **dismiss**, the tenant's application seeking an order for the landlord to:

- Comply with the Act, To make emergency repairs, To provide services or facilities required by law, and, Allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

I dismiss these portions **without leave to reapply**.

The tenant has applied for compensation for damage or loss, but has not provided evidence supporting or corroborating this claim and therefore is not statutorily entitled to compensation. Despite the tenant's lack of evidence, the landlord testified he does not

dispute reasonable compensation being ordered for extraordinary electrical usage incurred for heating the rental unit during the winter months. Therefore, by agreement such compensation forms part of this decision as follows.

The tenant is to be compensation for the period spanning December 15, 2009 to April 30, 2010 (135 days) in the amount of **\$7** per day for a total of **\$945**. As the tenant has been partially successful in their application I grant the tenant partial recovery of their filing fee in the amount of **\$25** – for a total monetary award of **\$970**.

### **Conclusion**

**I order** the landlord compensate the tenant in the amount of **\$970**. **I order** the tenant may deduct this amount from any rent owed to the landlord.

The balance of the tenant's application is **hereby dismissed without leave to reapply**.

**I grant an Order of Possession** to the landlord **effective 2 days** from the day it is served upon the tenant. The landlord has discretion. However, 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.

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*.