

DECISION

Dispute Codes

For the tenant	CNC, MNDC, AAT, FF
For the landlord	CNR, MNR

Introduction

This hearing was convened in response to cross applications by the tenant and the landlord.

The tenant seeks an order to set aside a Notice to End Tenancy for Cause issued May 12, 2010 and for a Monetary Order for damage or loss under the Act, regulation or tenancy agreement. As well the tenant seeks an Order allowing the tenant access to the unit.

The landlord seeks an Order of Possession pursuant to an undisputed 10 Day Notice to End Tenancy for Unpaid Rent dated June 01, 2010 and for a Monetary Order for the unpaid rent for June 2010 in the amount of \$700.

Both parties participated in the conference call hearing and provided sworn testimony.

Issues to be Decided

Is the 10 Day Notice to End tenancy for unpaid rent effective to end this tenancy?

Background and Evidence

The parties agreed that this tenancy began by way of an amended agreement (deleting one tenant) dated February 2010 between the landlord and the applicant tenant. The current rent is \$700 per month. On June 01, 2010 the landlord issued the tenant a Notice to End for unpaid rent for June 2010 by posting on tenant's door. The agreement is silent as to which day of the month the rent is due. The landlord asserts it is due in advance on the last day of the month. The tenant asserts it is due in advance on the first day of each month. Nonetheless, the tenant claims they do not owe the landlord rent for June 2010 because the tenant and landlord had an agreement that the

landlord would compensate the tenant \$700 for damaged belongings which the tenant purports occurred at the hands of the landlord. The tenant claims they sent the landlord an 'invoice' for \$700, with a letter and proviso that in the absence of a response the rent for June was considered paid. The landlord asserts the tenant's testimony is false – that they have not received the letter to which the tenant refers and did not enter into any agreement for the rent to be offset by any method or by any means and that the rent for June simply went unpaid and the Notice to End undisputed by the tenant. The landlord acknowledges they inadvertently damaged a piece of the tenant's furniture in storage and think the value of the damage amounts to no more than \$100, and are prepared to compensate the tenant \$150, which the tenant refused. The tenant testified that in their determination the rent for June is paid. The landlord agrees that the rent for July 2010 was paid and accepted for use and occupancy only.

The landlord seeks an Order of Possession for soon as possible as and no later than the end of July 2010 and a Monetary Order for June 2010 rent.

The tenant's application for a Monetary Order is for the \$700 the tenant claims they exchanged for rent for June 2010 - if the landlord's Notice to End for Unpaid rent is upheld. The tenant provided a copy of the previously referenced 'invoice' for the damaged property, and 4 photocopies of photos as proof of loss. The landlord reiterated their responsibility for a portion of the loss, but denied responsibility for the balance of the tenant's claim.

Analysis

When a landlord alleges that tenants have not paid rent, the tenants bear the burden of proving that rent has been paid. The tenants provided a document in their submission which they claim supports their argument that there was an agreement to offset the rent in full for the month of June 2010. I find the tenant's assertion of an agreement with the landlord in respect to June 2010 rent is no more than a unilateral assertion of what is fact in this matter and void of consensus to the terms of an agreement. As a result, I find that the tenants have not proven that they paid the rent for June 2010 on May 31, or June 01, or within the 5 days following the later date. I find that the tenant did not apply

to dispute the Notice to End for Unpaid Rent and that pursuant to section 46(5) the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. I find the landlord's Notice to end for Unpaid Rent to be valid and therefore must grant the landlord their application for an Order of Possession, and accordingly, I will so Order.

As I have found that the 10 Day Notice to End Tenancy for Unpaid Rent is effective to end the tenancy, it is unnecessary to address the grounds stated in the one month notice to end tenancy. The tenants' application to have that notice set aside is **dismissed** as the issue is moot, as is the tenant's application to allow access to the rental unit, which is also **dismissed**.

In respect to the tenant's claim for damage and loss, it must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

1. Proof the damage or loss exists,
2. Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

Therefore, the tenant bears the burden of establishing their claim on the balance of probabilities. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred. I find the tenant has not met the test for damage and loss, and I **dismiss** this claim, without leave to reapply.

In respect to the landlord's monetary claim, I find that the landlord has established a claim entitlement of **\$700** in unpaid rent.

Conclusion

The tenant's application is **dismissed**.

I grant an Order of Possession to the landlord **effective July 31, 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 grant the landlord a **Monetary Order** under Section 67 of the Act for the amount of **\$700**. 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*.