

## **DECISION**

### **Dispute Codes:**

OPR, CNR, MNR, MNDC, FF

### **Introduction**

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy for Unpaid Rent, for a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

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

The issues to be decided in relation to the Landlord's Application for Dispute Resolution are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

The issues to be decided in relation to the Tenant's Application for Dispute Resolution are whether the Tenant is entitled to monetary compensation for deficiencies with the rental unit and to recover the filing fee from the Landlord for the cost of the Application for Dispute Resolution, pursuant to sections 67 and 72 of the *Act*.

### **Background and Evidence**

The Landlord and the Tenant agree that this tenancy was to begin on April 01, 2010; that the Tenant did not get access to the rental unit until April 02, 2010; that the Tenant is required to pay monthly rent of \$1,000.00 on the first day of each month; and that the Tenant paid a security deposit of \$500.00.

The Tenant stated that when he gained access to the rental unit the rental unit was very dirty; there was a significant amount of garbage and furniture left in the rental unit; that there were lamps and items left in the rental unit that caused him to believe that there had been a marijuana grow operation in the rental unit; and that the heaters had been removed from the wall and were not functioning.

The Tenant stated that on April 02, 2010 or April 03, 2010 he went to the Landlord's restaurant; that he delivered lamps and other paraphernalia from the grow operation to the restaurant manager; that he attempted to pay the manager \$700.00 in rent for April of 2010; that the manager consulted with the Landlord by telephone; and that the manager subsequently refused to accept the \$700.00 in rent that had been offered.

The Landlord agreed that the Tenant delivered a significant amount of property to the restaurant sometime near the beginning of April and that he attempted to pay a portion of his rent to the restaurant manager, which the manager refused to accept. The Landlord denies being on the telephone with the restaurant manager during this transaction.

The Landlord and the Tenant agree that the Tenant paid rent of \$1,000.00 to the agent for the Landlord on May 02, 2010. The Landlord contends this was rent for April and the Tenant contends it was rent for May.

The Landlord and the Tenant agree that the Tenant paid rent of \$930.00 to the agent for the Landlord on June 15, 2010. The Landlord contends this was rent for May and the Tenant contends it was rent for June.

The Landlord and the Tenant agree that the Tenant paid rent of \$1,000.00 to the agent for the Landlord on June 30, 2010. The Landlord contends this was rent for June and the Tenant contends it was rent for July.

The Landlord and the Tenant agree that the Tenant has not paid rent of \$1,070.00, \$70.00 of which was from June of 2010, and the remaining \$1,000.00 is either from April of 2010 or July of 2010.

The Tenant stated that he did not pay the rent that he believes is due for April after his initial attempt to pay rent on April 02, 2010 or April 03, 2010, in part because the Landlord had threatened and assaulted him sometime during the month of April. He stated that he also did not pay it, in part, because he knew the matter was going to a hearing and he did not believe he needed to pay it prior to the outcome of the hearing.

He stated that he did not pay the outstanding rent of \$70.00 from June of 2010, because he forgot that it had not been paid.

The Landlord and the Tenant agreed that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of June 12, 2010, was posted on the door of the rental unit. The Agent for the Landlord stated that he posted the Notice of June 03,

2010 and the Tenant stated that he located it on his door on June 05, 2010. The Notice declared that the Tenant owed \$2,000.00 in rent that was due on May 01, 2010.

The Tenant stated that he applied to set aside the Notice to End Tenancy; that there was a hearing scheduled in regards to that matter, although he does not recall the date or the file number; that he attended that hearing, at which time he advised the Dispute Resolution Officer that he had reached a mutual agreement in regards to that matter; and that the Landlord did not attend the hearing. Residential Tenancy Branch records show that this hearing was held on May 18, 2010, at which time the Tenant withdrew his application.

The Tenant stated that he attempted to pay all of his outstanding rent sometime near the beginning of June of 2010 but that the Landlord refused his payment. The Landlord and the Agent for the Landlord both stated that only rent payment from the Tenant that was ever refused was the one that he attempted to make to the manager of the Landlord's restaurant in April of 2010.

The Tenant is seeking compensation, in the amount of \$500.00, for the time he spent cleaning the rental unit at the beginning of the tenancy and for the cost of reinstalling the baseboard heaters. The Tenant stated that the rental unit was very dirty and that he spent considerable time cleaning the rental unit and removing property left behind by the previous occupants.

The Landlord stated that he viewed the rental unit after the previous occupants vacated the rental unit and he agreed the rental unit needed some cleaning.

The Tenant and the Landlord agreed that the Tenant first advised the Landlord of the problems with the rental unit when he delivered lamps and other paraphernalia from the rental unit to the restaurant manager on April 02, 2010 or April 03, 2010. The Tenant acknowledged that he has never provided the Landlord with written notification of problems with the rental unit.

The Tenant stated that the Landlord initially refused to view the rental unit. He stated that the Landlord did come to the rental unit sometime near the middle of April of 2010; that the Landlord physically assaulted him at that time; and that he would not give the Landlord permission to enter the rental unit as a result of the assault.

The Tenant and the Agent for the Landlord agreed that the Agent viewed the rental unit sometime during the latter portion of April, at which time the rental unit had been cleaned. The Agent for the Landlord noted that the baseboard heaters were not attached to the wall at that time. The parties agreed that the Agent for the Landlord offered to repair the heaters; that the Tenant stated that he could have a friend repair the heaters; that the Agent advised the Tenant that he would compensate him for the repairs once a receipt was provided to the Landlord; and that a receipt was never provided to the Landlord.

The Tenant stated that his friend repaired the baseboard heaters sometime in May of 2010 but he has not submitted the receipt in evidence because he only recently received it. The Tenant stated that he paid \$300.00 to have the heaters repaired.

### Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$1,000.00 on the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord whether or not the Landlord complies with the *Act*.

I find that the Tenant failed to pay rent of \$1,000.00 when it was due on April 01, 2010 and rent of \$1,000.00 that was due on May 01, 2010, and that the Tenant owed the Landlord \$2,000.00 on May 01, 2010. I find that the Tenant paid \$1000.00 in rent on May 02, 2010, leaving an outstanding balance of \$1,000.00.

I find that the Tenant failed to pay rent of \$1,000.00 when it was due on June 01, 2010, and that the Tenant owed the Landlord \$2,000.00 on June 01, 2010. I find that the Tenant paid \$930.00 in rent on June 15, 2010, leaving an outstanding balance of \$1,070.00.

I find that the Tenant failed to pay rent of \$1,000.00 when it was due on July 01, 2010, and that the Tenant owed the Landlord \$2,070.00 on July 01, 2010. I find that the Tenant paid \$1,000.00 in rent on June 30, 2010, leaving an outstanding balance of \$1,070.00.

As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,070.00 in outstanding rent to the Landlord. There is no evidence to show that the Tenant had the legal authority to withhold rent from April of 2010.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. Based on the admission of the Tenant, I find that he received a Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*, on June 05, 2010. I find that he did not pay all of the outstanding rent of \$2,000.00 which was due on May 01, 2010 within fifteen days of receiving that Notice to End Tenancy. As the Tenant did not pay all the rent within fifteen days of receiving the Notice to End Tenancy and the Tenant did not have legal authority to withhold any portion of the rent that was due, I find that the Landlord is entitled to end this tenancy, pursuant to section 46 of the *Act*, and that the Landlord is entitled to an Order of Possession.

Even if I were to accept the Tenant's disputed testimony that the Landlord refused to accept payment for the outstanding rent in June of 2010, I find my decision would remain unchanged. Firstly, there is no evidence that the outstanding rent of \$1,070.00 was paid so the amount of rent that it is due to the Landlord remains unchanged. Even if rent had been accepted in June of 2010 the Landlord would remain entitled to an Order of Possession as the rent would not have been paid within fifteen days of the date the Tenant received the Notice to End Tenancy.

Based on the testimony of the Agent for the Landlord, who acknowledged that the baseboard heaters were not attached to the wall when he viewed the rental unit in April of 2010 and the Tenant's testimony that the heaters were not functioning at the beginning of the tenancy, I find that the heating system in the rental unit required repairs at the beginning of this tenancy. Section 33(5) of the *Act* stipulates that a landlord must reimburse a tenant for emergency repairs, which includes repairs to the primary heating system, only after the Tenant has provided the Landlord with a written account of the emergency repairs accompanied by a receipt for each amount claimed.

In these circumstances, I find that the Tenant did not provide the Landlord with a written account of the emergency repairs to the heating system or a receipt for each amount claimed. I therefore find that the Landlord is not obligated to pay for repairs to the heaters and I dismiss the Tenant's claim for compensation of \$300.00 for repairing the heaters.

Based on the testimony of the Tenant; the Landlord's acknowledgement that the Tenant transferred a variety of property from the rental unit to his restaurant on April 02, 2010 or April 03, 2010; and the Landlord's acknowledgement that the rental unit required cleaning at the end of the previous tenancy I find, on the balance of probabilities, that the Landlord did not provide the Tenant with a clean rental unit at the beginning of this tenancy.

I find that the value of this rental unit was reduced during the first month of this tenancy due to the fact that there was a significant amount of property left in the rental unit at the end of the previous tenancy, that the rental unit was dirty and in need of cleaning, and that the heating system was not functioning properly. Without the benefit of photographs to help me assess the condition of the rental unit at the beginning of the tenancy, it is difficult to determine how much compensation is due to the Tenant. I recognize, however, that moving into a rental unit that requires cleaning and repairs is a hardship and I therefore find that the Tenant is entitled to compensation in the amount of \$200.00 for that inconvenience.

I find that the Landlord's Application for Dispute Resolution and the Tenant's Application for Dispute Resolution each have merit and I therefore find that they are each responsible for the cost of filing their own Application for Dispute Resolution.

### Conclusion

I hereby grant the Landlord an Order of Possession that is on July 31, 2010 at 1:00 p.m. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$1,070.00, which is comprised of unpaid rent. I find that the Tenant has established a monetary claim, in the amount of \$200.00, which represents a rent reduction from the first month

of the tenancy. After offsetting the two monetary claims, I find that the Tenant owes the Landlord \$870.00.

I hereby authorize the Landlord to retain the Tenant's security deposit, in the amount of \$500.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$370.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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*.

Dated: July 28, 2010.

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Dispute Resolution Officer