

DECISION

Dispute Codes OPR, OPB, MNR, MNDC, FF, CNR, MNSD, RR

Introduction

This hearing dealt with applications by both the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for unpaid rent and a breach of an agreement with the landlord pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46 and for authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he handed the tenant his 10 Day Notice to End Tenancy for Unpaid Rent to the tenant on August 5, 2010. He said that he handed the tenant a copy of his application for dispute resolution on August 24, 2010. The tenant confirmed receiving both of these documents. The tenant said that she sent the landlord a copy of her application for dispute resolution by registered mail on August 10, 2010. The landlord confirmed receiving this application. I am satisfied that both parties served these documents in accordance with the *Act*.

During the hearing the tenant testified that she submitted an amended application for dispute resolution to the Residential Tenancy Branch on September 13, 2010. In that amended application, she said that she added requests for the return of her security deposit pursuant to section 38 and a reduction in her rent pursuant to section 65. Although the landlord said that he received a copy of this amended application, the

Residential Tenancy Branch has no record of the tenant's amended application. Under these circumstances, I have given consideration to these additional requests from the tenant in making my decision.

Issues(s) to be Decided

Is the tenant entitled to cancellation of the landlord's notice to end tenancy? Is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary Order for unpaid rent? Is the tenant entitled to a reduction in her rent? Is the tenant entitled to return of her security deposit? Are either of the parties entitled to recovery of their filing fees for this application?

Background and Evidence

The parties testified that this month-to-month tenancy commenced on April 27, 2002. The original monthly rent was set at \$1,100.00. On January 25, 2010, the parties testified that they entered into a renewal of their residential tenancy agreement, a copy of which was provided into evidence by the landlord. According to the terms of this tenancy renewal, the tenant was to issue two cheques to pay for the full amount of rent then owing for 2009. The first of these cheques was to be dated February 16, 2010 for \$1,910.00. The second cheque for an identical amount was to be dated March 16, 2010. The renewal agreement stated that the landlord agreed to reduce the monthly rent to \$800.00 per month from January 1, 2010. This agreement also established July 31, 2010 as the termination date for this tenancy. Monthly rent was to be paid on the 28th day of each month according to this renewal agreement.

The landlord testified that the two cheques that were supposed to recover the unpaid rent owing from 2009 were returned with insufficient funds in the tenant's account. The landlord entered undisputed written evidence of the summary of the rent owing, the tenant's payments and the balance owing from April 1, 2007 until the present. He provided evidence that the current unpaid rent owing from this tenancy is \$4,665.00.

The tenant testified that the rental premises were in very bad condition and that her rent should be reduced retroactively for much of her tenancy. She also objected to a \$119.00 charge the landlord had requested for the elimination of brush and brambles from the premises, which she maintained was the landlord's responsibility. She and her representative proposed that the landlord accept a reduced rental of \$400.00 for the next four months at which time she would agree to vacate the premises. The landlord rejected this proposal and asked for an Order of Possession and a monetary Order.

Analysis

Tenant's Application to Cancel the Notice to End Tenancy and Landlord's Application for an Order of Possession

I accept the landlord's undisputed evidence that there remains significant unpaid rent owing from this tenancy. The tenant did not dispute the landlord's testimony that she did not have sufficient funds in her account for the cheques she issued in February and March 2010 to resolve the outstanding unpaid rent from 2009. I do not accept the tenant's claim that her rent should be reduced retroactively for problems with the condition of the rental premises. It would appear that these conditions were reflected in the landlord's agreement to reduce the rent for 2010 to \$800.00 per month.

I dismiss the tenant's application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent. I find that the landlord is entitled to a 7 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 7 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The landlord's application for dispute resolution of his request to end the tenancy because the tenant had breached an agreement becomes moot with the above decision.

Monetary Order for Rental Arrears

I find that the landlord is entitled to receive an order for unpaid rent and loss experienced as a result of this tenancy. I issue the attached monetary Order that includes the landlord's application for \$4,665.00 in unpaid rent for this tenancy.

Security Deposit

The landlord testified that he continued to hold the tenant's security deposit of \$550.00 plus interest owing from April 27, 2002 until the date of this decision. Although the landlord's application does not seek to retain the security deposit, the tenant testified that she did request the return of her security deposit in her amended application. Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit plus interest in partial satisfaction of the monetary award.

Filing Fee

As the landlord was successful in his application, I allow him to recover his filing fee from the tenant. I make no such order for the tenant's application for her filing fee.

Conclusion

I dismiss the tenant's application for cancellation of the landlord's notice to end tenancy for unpaid rent. I grant the landlord an Order of Possession to be effective 7 days after notice is served to the tenant.

I make a monetary Order in favour of the landlord as follows:

Item	Amount
Unpaid Rent Owing	\$4,665.00
Less Security Deposit (\$550.00 + \$19.47 = \$569.47)	-569.47
Recovery of Filing Fee for Landlord's Application	50.00
Total Monetary Order	\$4,145.53

This monetary Order incorporates the landlord's retention of the tenant's security deposit and the landlord's recovery of his filing fee from the tenant. I dismiss the

tenant's application for recovery of her filing fee. I dismiss the tenant's application for a reduction in rent.

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*.