



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

Dispute Codes:

OPC, MNR, MNSD, MNDC, FF

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent, for the cost of replacing the appliances and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim. The tenant applied for a monetary order for compensation and the filing fee.

This matter was originally scheduled to be heard on October 13, 2010. Both parties attended that hearing. During that hearing the tenant informed me that he intended to pursue his application for compensation in the Supreme Court of British Columbia and accordingly he withdrew his application. Therefore this hearing only dealt with the landlord's application for an order of possession and a monetary order.

During the hearing on October 13, 2010, the tenant stated that he had received the landlord's submissions late and therefore did not have sufficient time to prepare his defence. The tenant requested that the hearing be adjourned. Accordingly the hearing was adjourned to this date October 25, 2010.

On October 21, 2010, the tenant sent in a written request for a further adjournment of this proceeding. The reason given by the tenant for his request was that he was in the process of purchasing a property, which he intended to move to prior to October 31, 2010. His request for an adjournment was denied by the landlord.

Rule 6 of the *Residential Tenancy Branch Rules of Procedure* speaks to rescheduling of a proceeding by consent of both parties. If one party does not consent to rescheduling the proceeding, it must commence at the scheduled time and the party requesting the adjournment can ask the Dispute Resolution Officer to reschedule the proceeding by setting out the circumstance that are beyond the party's control that will prevent him or her from attending the proceeding or have an agent represent the party at the proceeding to make a request to the Dispute Resolution Officer to reschedule the dispute resolution proceeding.

The tenant did not call in to request an adjournment nor did he have an agent call in on his behalf. Even if the tenant or his agent had called in, I find that the circumstances that he describes as rendering him unable to attend the proceeding are not circumstances that are beyond his control. Therefore the tenant's request for an adjournment was denied and the hearing continued on in his absence.

The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to an order of possession? Is the landlord entitled to a monetary order for unpaid rent, the cost of replacing the appliances and the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The landlord and tenant entered into a tenancy agreement on May 15, 2010. The monthly rent is \$1,350.00 payable on the first of the month. The rent did not include utilities. The tenant paid a security deposit of \$675.

In the first week of August, the parties came to an agreement about replacing the appliances. The tenant stated in his letter that he had intentions of staying long term. The tenant along with input from the landlord made arrangements for the existing appliances to be removed and replaced by new appliances.

The landlord was hoping to get some compensation for the old appliances but was later informed by the tenant that there was none available. The landlord stated that the appliances were approximately six years old and were purchased as used rebuilt appliances.

Since it was intended that the tenancy would be long term, the parties decided that the landlord would pay off the cost of the appliances by lowering the rent by \$50.00 per month. Accordingly, the tenant paid \$1,300.00 plus utilities for the months of June, July and August.

After the appliances were installed, the tenant informed the landlord that the agreed upon deduction in rent of \$50.00 should be considered as rent for the appliances and that the ownership of the appliances would lie with the tenant. The landlord did not agree to the change in their agreement. The relationship between the two parties started to deteriorate from that point on.

The tenant failed to pay rent for September and October because he felt that the landlord owed him money towards the new appliances. On August 31, 2010, the landlord served the tenant with a notice to end tenancy for cause. The tenant applied for dispute resolution on September 03, but did not dispute the notice to end tenancy.

The landlord is claiming the following:

1.	Balance of rent owed for June, July and August 2010	\$150.00
2.	Rent plus utilities for September 2010	\$1,485.00
3.	Rent plus utilities for October 2010	\$1,485.00
4.	Cost of appliances removed by the tenant	\$2,440.00
5.	Filing fee	\$50.00
	Total	\$5,610.00

Analysis

Based on the undisputed sworn testimony of the landlord, I accept his evidence in respect of the claim. Pursuant to section 46 (4) of the *Residential Tenancy Act* within ten days after receiving the notice to end tenancy, the tenant may dispute the notice by making application for dispute resolution.

If the tenant does not dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date.

The tenant received the notice to end tenancy on August 31, 2010 and applied for dispute resolution on September 03, 2010. However, the tenant did not apply to dispute the notice to end tenancy and therefore, the notice is upheld and pursuant to section 55(2) I am issuing a formal order of possession effective on or before 1:00p.m.on October 31, 2010. This Order may be filed in the Supreme Court for enforcement.

In the absence of evidence to the contrary, I find that the tenant owes the landlord partial rent for the months of June, July and August in the amount of \$150.00 and full rent for September and October 2010 in the total amount of \$2,970.00 (includes utilities).

In his written submission, the tenant stated that the stove from the rental unit was moved to the upstairs and is being used by the landlord. Therefore, I will deduct \$680.00 from the landlord's claim of \$2,440.00 as this is the amount that he is claiming for the value of the stove and hood that was removed from the rental unit.

Section 37 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the appliances that were removed from the rental unit. As per this policy, the useful life of a refrigerator, washer and dryer is 15 years while the useful life of a dishwasher is 10 years.

Based on the guideline, I find that the refrigerator, washer and dryer each have a remainder of nine years of useful left. Accordingly I award the landlord \$779.94 which represents the prorated value of the remainder of their useful life. The dishwasher had a useful life of four years left and accordingly I will award the landlord \$40.00 for this appliance. The landlord has also estimated delivery charges and taxes of \$360.00.

Overall I will award the landlord a total of \$1,000.00 towards his claim for the replacement of his appliances. The landlord has proven a major portion of his claim and therefore is entitled to the recovery of the filing fee of \$50.00.

The landlord has established the following claim:

1.	Balance of rent owed for June, July and August 2010	\$150.00
2.	Rent plus utilities for September 2010	\$1,485.00
3.	Rent plus utilities for October 2010	\$1,485.00
4.	Cost of appliances	\$1,000.00
5.	Filing fee	\$50.00
	Total	\$4,170.00

I order that the landlord retain the security deposit of \$675.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$3,495.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective on or before 1:00p.m.on October 31, 2010. I also grant the landlord a monetary order in the amount of **\$3,495.00**

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: October 25, 2010.

Dispute Resolution Officer