

DECISION

Dispute Codes OPR, OPB, MNR, FF, ET, CNC, ERP

Introduction

This hearing dealt with applications from 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 for breach of a material term of the tenant's Residential Tenancy Agreement pursuant to section 55;
- an early end to this tenancy and an Order of Possession pursuant to section 56;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47; and
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

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 she handed the tenant a One Month Notice to End Tenancy for Cause on January 27, 2011. The tenant confirmed having received this Notice. The landlord also testified that she posted a 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door at 5:50 p.m. on February 2, 2011. She submitted a written and witnessed Proof of Service document regarding her posting of this Notice. Although the tenant said that he did not receive this Notice, he did not dispute the landlord's witnessed statement that she posted it on his door on February 2, 2011. He said that "I believe it was posted on the door" and that one of his children must have removed it. Based on the undisputed evidence of the landlord, I accept that the 10 Day Notice to End Tenancy for Unpaid Rent was posted on the tenant's door on February 2, 2011. This Notice was deemed served on February 6, 2011, three days after it was posted.

The landlord agreed that the tenant handed his dispute resolution hearing package to her on February 1, 2011. The tenant agreed that the landlord handed her dispute resolution hearing package to him on February 11, 2011. I am satisfied that these packages and the landlord's Notices to End Tenancy were served to one another in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover her filing fee for her application from the tenant?

Background and Evidence

This month-to-month tenancy commenced on December 1, 2010. Monthly rent was set at \$1,500.00, payable on the first of the month. The landlord continues to hold the tenant's \$750.00 security deposit paid on December 1, 2010.

The landlord testified that she gave the tenant the One Month Notice to End Tenancy on January 27, 2011. The parties agreed that the tenant has not yet provided the landlord with a receipt she requested for his purchase of \$150.00 in smoke alarms for the rental property. He made this purchase in lieu of paying an equivalent amount in rent for January 2011.

When the tenant did not pay his February 2011 rent on February 1, 2011, the landlord posted the 10 Day Notice to End Tenancy for Unpaid Rent on his door. The landlord said that he told her that he was reluctant to pay this rent if she was going to evict him for cause as set out in the One Month Notice to End Tenancy he received on January 27, 2011. Both parties agreed that the tenant has not paid any portion of his February 2011 rent and has not provided the landlord with the requested \$150.00 receipt for purchases he deducted from his January 2011 rent. The tenant said that he has been delaying making this payment pending the outcome of his application to cancel the landlord's One Month Notice to End Tenancy.

Analysis

Order of Possession

At the commencement of the hearing, the tenant said that he planned to pay the outstanding rent if he was successful in having the One Month Notice to End Tenancy cancelled. On February 11, 2011, he received the landlord's application for dispute resolution. In that application, the landlord advised him that she was pursuing an Order of Possession for unpaid rent. At that point, the tenant was still within the five day time period for paying his outstanding rent. I find that the tenant chose not to pay his outstanding rent even after he received the landlord's application for dispute resolution in which she noted that she had left a notice for him on his door on February 2. The tenant failed to pay the \$1,650.00 in unpaid rent for January 2011 and February 2011 within five days of being deemed to have been served with the landlord's 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have been served with the landlord's 10

Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy ten days after he was deemed served with this Notice. In this case, this required the tenant to vacate the premises by February 16, 2011. As that has not occurred, I find that the landlord is entitled to a 2 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 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Monetary Award

I issue a monetary award in the landlord's favour for the undisputed amount of unpaid rent outstanding. If the tenant produces satisfactory receipts for the \$150.00 he spent for items for the rental property, the landlord said that she would not collect on the \$150.00 charge she is seeking for January 2011. However, since the tenant has not provided these receipts to her as of the date of this hearing, I am including \$150.00 for January 2011 and \$1,500.00 for February 2011 in the attached monetary Order.

The landlord testified that she continues to hold the tenant's security deposit of \$750.00 plus interest from December 1, 2010 until the date of this decision. Although the landlord's application does not seek to retain the deposit, 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. No interest is payable over this period. Since the landlord has been successful in her application, I allow her to recover her filing fee from the tenant.

As the tenant did not apply for dispute resolution regarding the landlord's Notice to End Tenancy for Unpaid Rent and his tenancy ended on that basis, I find that the tenant's application to cancel the landlord's One Month Notice to End Tenancy for Cause is moot. I dismiss the landlord's application for a One Month Notice to End Tenancy for Cause (Breach of a Material Term of the Agreement), the tenant's application to cancel that Notice and the landlord's application for an early end to this tenancy. Similarly, since the tenancy has ended, I dismiss the tenant's application for emergency repairs to the rental unit.

Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the following terms which allows the landlord to recover unpaid rent and the filing fee for her application and to retain the tenant's security deposit in partial satisfaction of the monetary award.

Item	Amount
Unpaid January 2011 Rent	\$150.00
Unpaid February 2011 Rent	1,500.00
Less Security Deposit	-750.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$950.00

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

Since this tenancy has ended due to the tenant's non-payment of rent, I dismiss the remainder of the landlord's applications and all of the tenant's applications.

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*.