



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MT, CNR, MNR, OLC, ERP, RP, LRE, LAT, RR, OPR, MNR, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and more time to bring his application to dispute it, a monetary order, an order that the landlord comply with the Act and perform repairs, an order suspending the landlord's right to enter the unit and authorizing the tenant to change the locks and an order permitting the tenant to reduce his rent. The landlord brought a cross-application for an order of possession and a monetary order. Both parties participated in the conference call hearing.

Issues to be Decided

Is the tenant entitled to the orders claimed?
Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order?

Background and Evidence

The parties agreed that the tenancy began on February 1, 2011 and that the tenant was obligated to pay \$900.00 in rent in advance on the first day of the month. The parties further agreed that the tenant has paid no rent.

The tenant testified that the landlord had promised to perform a number of repairs prior to the commencement of the tenancy and failed to do those repairs, so in February the tenant hired a contractor to complete the repairs.

The landlord testified that on February 11, the notice to end tenancy was posted on the tenant's door. The tenant acknowledged having received the notice on February 14.

Analysis

Section 26(1) of the Act requires tenants to pay rent when it is due regardless of whether the landlord has complied with the Act. Section 33 contains provisions whereby a tenant who performs emergency repairs, which are very narrowly defined, may deduct the cost of those

repairs *after* the repairs have been completed. I find that the tenant received the notice to end tenancy for non-payment of rent on February 17. I find that the tenant did not have a legal right to withhold rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an order of possession. At the hearing the parties agreed that the notice should take effect on March 14, 2011 and I have therefore made it effective on that date. 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 find that the landlord is entitled to recover the unpaid rent for February and I award him \$900.00. I further find that the landlord is entitled to occupational rent for March 1 -14 and I grant the landlord a further \$450.00. The claim for lost income for the remainder of March is dismissed with leave to reapply in the event the landlord is unable to locate another tenant for March 15. I find that the landlord is entitled to recover the \$50.00 filing fee paid to bring his application and I award him \$50.00.

I dismiss with leave to reapply the tenant's claim for a monetary order for the cost of repairs as I find the claim was made prior to the repairs having been completed and is therefore premature. The remainder of the tenant's claims are dismissed without leave to reapply.

Conclusion

The landlord is granted an order of possession and monetary order for \$1,400.00. The landlord's claim for loss of income for March 15 – 31 is dismissed with leave to reapply.

The tenant's monetary claim is dismissed with leave to reapply. The remainder of the tenant's claims are dismissed without leave to reapply.

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: March 04, 2011

Residential Tenancy Branch