

## **Decision**

**Dispute Codes:** CNR, RR, FF / OPR

### **Introduction**

This hearing dealt with an application by the tenant for cancellation of a notice to end tenancy for unpaid rent or utilities / authority to reduce rent for repairs, services or facilities agreed upon but not provided / and recovery of the filing fee. Both parties participated and / or were represented in the hearing and gave affirmed testimony.

During the hearing the landlord made an oral request for an order of possession, in the event that the tenant's application to cancel the notice to end tenancy fails.

At the outset, the tenant requested an adjournment in order to obtain assistance to present his case. The landlord objected, arguing that it was an attempt to delay proceedings, and that an adjournment would deny the landlord an opportunity to proceed to conclude the dispute in a timely manner. In view of the fact that the hearing was convened in response to the tenant's application, and in light of the fact that the tenant had ample time after filing his application to obtain assistance for the hearing which was scheduled almost 2 weeks later, the tenant's request was denied.

### **Issues to be decided**

- Whether either party is entitled to any of the above under the Act

### **Background and Evidence**

There is no written tenancy agreement in evidence for this month-to-month tenancy which began on August 15, 2010. Monthly rent is \$1,200.00, and a security deposit of \$600.00 was collected.

A previous hearing was convened on February 11, 2011 in response to the tenant's application for, among other things, authority to reduce rent for repairs, services or facilities agreed upon but not provided. By decision issued on the same date, the dispute resolution officer dismissed the tenant's application for a reduction in rent. However, a monetary order was issued in favour of the tenant in the amount of \$550.00, as compensation for "the time spent cleaning up after the flooding occurred as well as for the time spent drying the basement," in addition to recovery of the filing fee.

The tenant applied for review of the decision and order as above. Thereafter, by decision dated March 16, 2011, the tenant's application was dismissed and the decision

and order dated February 11, 2011 were confirmed. During this present hearing, the tenant testified that he had not yet received the review decision of March 16, 2011.

Arising from rent which remained unpaid on February 1, 2011, the landlord issued a 10 day notice to end tenancy dated February 22, 2011. The notice was mailed to the tenant on February 23, 2011 by registered mail. The tenant filed an application to dispute the notice on March 4, 2011. A copy of the notice was submitted in evidence. The amount of rent shown as overdue on the notice is \$2,300.00. During the hearing the landlord testified that this is comprised as follows:

\$600.00: unpaid rent for the period August 15 to 31, 2010

\$600.00: unpaid rent for September 2010

\$500.00: unpaid rent for October 2010

\$600.00: unpaid rent for January 2011

Efforts undertaken by the parties to resolve the dispute during the hearing were not successful.

### **Analysis**

Based on the documentary evidence and the affirmed testimony of the parties, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated February 22, 2011. Pursuant to section 90 of the Act (**When documents are considered to have been received**), the notice is deemed to have been received on February 28, 2011. The tenant filed his application to dispute the notice on March 4, 2011, which is within the 5 day period available to dispute a notice pursuant to section 46 of the Act (**Landlord's notice: non-payment of rent**). While the landlord testified that the tenant paid rent in full for February and March 2011, the outstanding rent, as set out in the notice and above, has not been paid.

Based on the documentary evidence and the affirmed testimony of the parties, I find on a balance of probabilities that the landlord has established entitlement to an order of possession on the basis of rent that has not been paid in full. In the result, the tenant's application for cancellation of the notice to end tenancy is hereby set aside. In consideration of rent having been paid in full for February and March 2011, the order of possession will be made effective March 31, 2011.

As to the aspect of the tenant's application which concerns authority to reduce rent, I find that this matter was previously heard and addressed by way of decision dated

February 11, 2011. In this regard, Black's Law Dictionary defines *res judicata*, in part, as follows:

Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

Following from the above, the tenant's application for authority to reduce rent is hereby dismissed.

As the tenant has not succeeded in applying for cancellation of the 10 day notice, or for authority to reduce rent, his application to recover the filing fee is hereby dismissed.

### **Conclusion**

I hereby issue an **order of possession** in favour of the landlord effective **1:00 p.m., Thursday, March 31, 2011**. This order must be served on the tenant. 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.

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*.

DATE: March 17, 2011

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Residential Tenancy Branch