



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The tenants applied for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) pursuant to section 46 of the *Act*. The landlord applied for:

- an Order of Possession for unpaid rent 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;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants 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. Both parties confirmed that the landlord handed the Notice to the male tenant (the tenant) who attended the hearing on March 17, 2011. Both parties confirmed receiving one another's dispute resolution hearing packages by registered mail. I am satisfied that these documents were served to one another in accordance with the *Act*.

Issues(s) to be Decided

Should the landlord's Notice to End Tenancy be dismissed? 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 retain the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This month- to-month tenancy commenced on September 1, 2007. Current monthly rent is set at \$1,020.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$450.00 security deposit paid on September 1, 2007. The landlord gave undisputed oral evidence that the tenants failed to pay their March 2011 rent on March 1, 2011. The female tenant gave the landlord a post-dated cheque for March 15, 2011, at which time she said she would have funds from one of her

accounts that would be sufficient to enable the landlord to negotiate the cheque. Later, the tenants asked for more time to pay their rent, advising that they would be able to pay their rent in full on March 21, 2011, when the male tenant received funds due him. The landlord issued his Notice for Unpaid Rent on March 17, 2011, as he did not agree with further delaying efforts to obtain the unpaid rent. The tenants subsequently advised that they would pay the rent on March 22, 2011. The landlord testified that he asked the tenants for a time on the 22nd when they would be able to make this payment. He said that they told him that he would be receiving a registered letter from them. This letter was the tenants' application for dispute resolution.

The landlord entered undisputed evidence that he has received no payments from the tenants for March or April 2011. The tenant testified that he has been working full-time lately and has been unable to deliver the March 2011 rent payment to the landlord by way of a March 25, 2011 money order the tenant has obtained. The landlord provided undisputed oral testimony that there has been a long history of late payment of rent from the tenants and that he has given them repeated warnings regarding the unacceptability of their late payments. The landlord said that there has been ample opportunity since he issued the March 17, 2011 Notice to pay their rent. He asked for an Order of Possession to take effect at the end of April 2011.

The tenant agreed that they have been late in paying their rent. He said that he receives disability cheques and has been undergoing chemotherapy. He said that this situation will improve now that he is working full-time. On cross-examination, the tenant said that his full-time work relates to the upcoming federal election.

Analysis

Applications to Cancel Notice to End Tenancy and for an Order of Possession

Although the tenants applied for dispute resolution pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice, they have not disputed the landlord's claim that they did not pay their March 2011 rent within five days of receiving the 10 Day Notice. As of the date of this hearing, I accept the landlord's testimony that the tenants have not paid any portion of their March 2011 rent.

Based on the undisputed evidence regarding the tenants' non-payment of rent within five days of receiving the 10 Day Notice, I dismiss the tenants' application to cancel the Notice. I find that the landlord is entitled to an Order of Possession. The landlord will be given a formal Order of Possession requiring the tenant(s) to vacate the rental premises by one o'clock in the afternoon on April 30, 2011 which must be served on the tenant(s).

Monetary Award

Based on the evidence presented at the hearing, I find that the landlord is entitled to a monetary award of \$1,020.00 for unpaid rent for March 2011, and \$1,020.00 for unpaid rent for April 2011. I allow the landlord to retain the tenants' security deposit plus interest from September 1, 2007 until the date of this decision in partial satisfaction of this monetary award. Since the landlord has been successful in this application, I allow him to recover his filing fee for this application from the tenants.

Conclusion

I dismiss the tenants' application to cancel the Notice to End Tenancy without leave to reapply. The landlord is provided with a formal copy of an Order of Possession effective at one o'clock in the afternoon on April 30, 2011. 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 landlord's favour in the following terms which allows the landlord to recover unpaid rent and his filing fee, and to retain the tenants' security deposit in partial satisfaction of the monetary award.

Item	Amount
Unpaid March 2011 Rent	\$1,020.00
Unpaid April 2011 Rent	1,020.00
Less Security Deposit Plus Interest (\$450.00 + \$9.04 = \$459.04)	-459.04
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,630.96

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.

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*.