



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

This hearing was convened in response to an application by the Tenant and a cross application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on June 7, 2011 for an Order cancelling a *10 Day Notice to End Tenancy for Unpaid Rent* (the "Notice") pursuant to section 46 of the Act

The Landlord applied on June 14, 2011 for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Notice valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on March 28, 2011. Rent in the amount of \$600.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord did not collect a security deposit. The Landlord states that the Tenant failed to pay rent for the months of May and June 2011 and on June 2, 2011 the Landlord personally served

the Tenant with a notice to end tenancy for non-payment of rent. The Landlord claims the amount of \$1,200.00 in unpaid rent.

The Tenant states that on May 4, 2011, an attempt was made by the Tenant to pay the Landlord cash. The Tenant states that the Landlord refused to provide a receipt for the cash and informed the Tenant that a receipt would only be issued if the Tenant paid \$750.00 in cash. The Tenant states that on May 10, 2011 he attempted to pay the rent through a money order but the Landlord refused to take it. The Tenant states that after receiving the Notice, he did not make any attempts to pay the rent as the Landlord refused to provide a receipt for cash in the past, because the Landlord refused to provide a copy of the lease agreement to the Tenant, because the Landlord has restricted access to the Tenants work tools and because the Landlord disconnected the cable that the Tenant states was included in the lease agreement.

The Landlord states that on May 4, 2011 the Tenant approached him with money rolled in his hand and asked for a receipt for the rent. The Landlord states that only a \$20.00 bill was visible from inside the Tenant's hand so the Landlord told the Tenant to count out the money and the Landlord would get a receipt for the Tenant. The Landlord states that the Tenant did not count out the money but left. The Landlord states that on May 10, 2011, the Tenant provided the Landlord with only a photocopy of a money order. The quantum of the Landlord's claim is \$1,200.00.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. Section 26 of the Act provides that a tenant must pay rent when it is due whether or not a landlord complies with the Act, regulations or tenancy agreement.

Based on the Landlord's testimony I find that the Tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. Although the Tenant states that he attempted to pay the rent in May 2011 and the Landlord refused to accept the rent, following the service of the Notice, the Tenant made no attempts to pay the rent as he claims that the Landlord has breached the Act. Given the application of section 26 of the Act, I find that the Tenant has no valid reason for not paying rent. Accordingly, I find that the Landlord is entitled to an **Order of Possession** and has established a monetary claim for **\$1,200.00** in unpaid rent. The Landlord is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$1,250.00**.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. 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 grant the Landlord an order under Section 67 of the Act for the amount of **\$1,250.00** for unpaid rent. If necessary, this order may be filed in the Small Claims Court 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*.

Dated: June 29, 2011.

Residential Tenancy Branch