



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

<u>Dispute Codes</u>	Tenant CNR, OLC, ERP, RP, FF Landlord OPR, MNR, MNDS, FF
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Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notice to End Tenancy for unpaid rent, for the Landlord to comply with the Act, for emergency repairs and repairs to the unit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on June 3, 2011 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by personal delivery on May 30 or 31, 2011.

The Landlord and Tenant both confirmed that they received the other's hearing packages.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to retain the Tenant's security deposit?

Tenant:

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Has the Landlord complied with the Act?
3. Is the Tenant entitled to emergency repairs?
4. Is the Tenant entitled to other repairs?

Background and Evidence

This tenancy started on May 1, 2011 as a fixed term tenancy with an expiry date of May 1, 2014. Rent is \$1,800.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$900.00 April 26, 2011.

The Landlord said that the Tenant did not pay \$1,800.00 of rent for May, 2011, when it was due and as a result, on May 23, 2011 she personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated May 23, 2011 to the Tenants. The effective vacancy date on the Notice is June 1, 2011. The Landlord also said the Tenants have unpaid rent for June, 2011 in the amount of \$1,800.00.

The Landlord further indicated that the Tenant is living at the rental unit and the Tenant said that they would like to continue tenancy. The Landlord said she has asked the Tenants for the rent and they told her that they will make the rent payments when the repairs to the unit are completed. The Landlord said the kitchen floor has been replaced and the hot water tank has been replaced and she believes the stair railing has been repaired. The Landlord said the rent for May and June 2011 has not been paid therefore she is requesting an Order of Possession if her application is successful.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding.

The Tenant said that the property manager D.N said that the repairs noted on the move in inspection report would be done prior to May 1, 2011 the move in date. The move in condition report was not submitted into evidence. The repairs were not completed by May 1, 2011 so the Tenants said the tenancy was delayed until May 15, 2011. The Tenant said they did not pay the May, 2011 rent because the repairs were not completed and they felt they could not move in to the unit as the unit was not safe for their child. The Landlord and the Landlord's agent said there was no amendment made to the tenancy agreement regarding the tenancy starting on May 15, 2011 instead of May 1, 2011. The Tenant continued to say the railing in the rental unit was not repaired by the Landlord and they did not repair it or pay to have the railing repaired so the Tenants said they did not pay the rent. The Tenants said they would like to continue the tenancy if possible and the Tenant made a settlement offer of \$1,800.00 on the condition that the railing in the rental unit would be fixed to building standards code. The Landlord said she would not accept the Tenant's offer and she wanted a decision by the Residential Tenancy Branch.

Analysis

Section 26 of the Act says that a Tenant must pay rent when it is due under the Tenancy agreement, whether or not the landlord complies with this act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

The Tenant indicated he thought he was acting appropriately and was trying to resolve the situation with the Landlord, but he did not realize that rent has to be paid when it is due unless the Tenant has the right to withhold it. Consequently I find the Tenant has not established grounds to be entitled to an Order to Cancel the Notice to End Tenancy dated May 23, 2011 and I dismiss the Tenant's application to cancel the Notice to End Tenancy, to have the Landlord comply with the Act and for repairs to the unit. In addition as the Tenant is unsuccessful in this matter I order the Tenant to bear the cost of the filing fee of \$50.00 that he has already paid.

With regard to the Landlord's application, I find that the Tenant has not paid the overdue rent and has not been successful in cancelling the Notice to End Tenancy. Consequently, I find pursuant to s. 55(1) of the Act that the Landlord is entitled to an Order of Possession to take effect on June 30, 2011.

I also find that the Landlord is entitled to recover unpaid rent for May, 2011, in the amount of \$1,800.00 and unpaid rent for June, 2011 in the amount of \$1,800.00 as there is no written agreement amending the original tenancy agreement and it is not clear if there was any agreed to changes to the move in date. The Landlord said there was no change to the tenancy agreement the Tenant said they made an agreement with the Landlord's agent D.N. to move in May 15, 2011. I find there is no supporting evidence or testimony to confirm the tenancy agreement was amended.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$3,600.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$3,650.50
Less:	Security Deposit	\$ 900.00	
	Subtotal:		\$ 900.00
	Balance Owing		\$ 2,750.00

Conclusion

An Order of Possession effective June 30, 2011 and a Monetary Order in the amount of \$2,750.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenants' application is 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*.

Residential Tenancy Branch