



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, CNR, MND, MNR, SS, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the tenant: as an application for cancellation of a notice to end tenancy; and to recover the filing fee associated with this application.

By the landlord: as a cross application for an Order of Possession for unpaid rent and for breach of an agreement with the landlord; a Monetary Order for damage to the unit and unpaid rent; for service of documents or evidence in a different way than required by the Act; and to recover the filing fee associated with his application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

Is the tenant entitled to cancellation of a notice to end tenancy?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a single detached home. Pursuant to a written agreement, the tenancy started in April 2010 at \$700.00 per month for 6 months. The parties agreed to renew the tenancy on October 15th, 2010 and signed a lease agreement for \$900.00 per month. The tenant paid a security deposit of \$350.00.

The landlord testified that the tenant could not afford to pay \$900.00 and reduced the rent by \$100.00 starting December 2010. The landlord stated that the tenant is in arrears of \$30.00, and that a friend of the tenant caused some damage in the bathroom that he had to have repaired for \$400.00.

The landlord also said that the tenant uses a fire pit illegally, and that he received a warning letter from the City of Chilliwack.

The landlord gave the tenant a 10 Day Notice to End Tenancy for unpaid rent on May 1st, 2011 by posting the notice on the door and sending it registered mail.

The landlord's updated monetary claim is as follows:

- Unpaid rent for October 2010:	\$ 200.00
- Unpaid rent of \$100.00/month between Dec. 2010 and Jun. 2011:	\$ 700.00
- Unpaid utilities:	\$ 30.00
- Damage to the bathroom:	\$ 400.00
- Filing fee:	\$ 50.00
- Mailing costs:	\$ 7.00
- Total:	\$1387.00

The tenant testified that the rent reduction of \$100.00 was verbally agreed upon. He agreed to the damaged bathroom wall but said that he never received a receipt and found the claim excessive for three holes. He stated that he is actively looking to find

other living accommodations, and that he has not used the fire pit for months. In his documentary evidence, the tenant provided a copy of the landlord's notice to end tenancy for unpaid rent of \$100.00. The tenant stated that he was not aware that the landlord made a retro-active claim since October 2010.

The parties stated that they were friends, and that the friendship has deteriorated over this dispute. An opportunity to resolve this matter informally during the hearing could not be achieved.

Analysis

There was no tenancy agreement or notice to end tenancy from the landlord before me. Section 42(1) of the Act states that a landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) If the tenant's rent has not been previously increased, the date on which the tenant's rent was first established under the tenancy agreement;
- (b) If the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

The *Residential Tenancy Policy Guideline* states that even if the tenant agrees **in writing** to the proposed increase, the landlord must still follow the requirements regarding the timing and notice of the rent increases.

The tenancy started April 2010. Pursuant to the Act, the landlord was not entitled to increase rent until April 2011. Therefore the landlord did not have grounds to issue the tenant with a 10 Day Notice to End Tenancy for unpaid rent and I find the notice of no effect.

Concerning the landlord's claim for repairs to the bathroom, in the absence of receipts I award the landlord \$200.00.

Concerning the outstanding utility charge, in the absence of receipts or invoice I award the landlord \$15.00.

Other than the filing fee, there is no provision for a party to make a claim under the Act for mailing costs or costs related to an application for dispute resolution.

Conclusion

The landlord's application for an order of possession is dismissed and the tenancy will continue. The landlord established a claim of \$230.00 and pursuant to Section 67 of the Act I grant the landlord a monetary order for \$230.00.

This Order may be registered in the Small Claims Court and enforced as an order of that Court.

Each application had merit; therefore I decline to make an order regarding the filing fees and each party will assume responsibility for the costs associated with their application.

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 06, 2011.

Residential Tenancy Branch