

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, MT, CNR, ERP, RR, FF, O

Introduction

Both parties have filed applications. The Landlord has filed an application for an order of possession resulting from a 10 day notice to end tenancy for unpaid rent, a monetary order request for unpaid rent, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and recovery of the filing fee. The Tenant has filed an application to allow more time to make an application to cancel a notice to end tenancy, a monetary order request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to have the Landlord make emergency repairs for health or safety reasons, to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided and the recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

The Tenant has provided no evidence or direct testimony for a reason to allow more time to make an application for dispute resolution to cancel the Landlord's notice to end tenancy. As such, I dismiss the Tenant's claims concerning the Landlord's 10 day notice. The Tenant has confirmed receiving the notice when it was posted on May 3, 2011. The Tenant filed his application for more time on May 19, 2011 well past the allowed 5 days to pay the rent or file an application for dispute. The Tenant is deemed to accept that the Tenancy is at an end. Based upon the above facts, I find that the Landlord is entitled to an order of possession.

As the Tenancy is at an end and the Tenant has not provided any details or evidence of emergency repairs needed, I dismiss this portion of the Tenant's application. The Tenant has not provided any details or evidence that the Landlord has not provided any repairs, services or facilities as agreed upon. Neither has the Tenant provided any evidence of notice to the Landlord to address the issues being sought in his claim. The Tenant's application to reduce rent for this purpose is also dismissed.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Tenant entitled to a monetary order?

Background and Evidence

Both parties agree that there is a signed tenancy agreement, but neither party has submitted a copy. Both parties have confirmed that the monthly rent is \$650.00 payable on the 1st of each month and a security deposit of \$312.50 was paid on January 16, 2006.

The Tenant has confirmed in his direct testimony that he did not pay the rent based upon the 10 day notice for unpaid rent issued on May 3, 2011. The Landlord states based on the notice that the Tenant is in arrears for the months of May and June 2011 and as of the date of this hearing remain unpaid and the Tenant continues to occupy the unit. The Tenant disputes this by referring to the Landlord's evidence that both parties signed an agreement allowing the Tenant, "5 months (May to September 2011) free rent and \$200.00 cash for the van altercation." The Tenant states that this note was written by him on the date indicated of April 6, 2011 and signed by both him and the Landlord. The Tenant states that the only copy was taken by the Landlord and submitted into evidence by the Landlord. The Landlord's agent claims that the note was signed under duress, stating that the Tenant was crying at the time and that his behaviour to the Landlord who is an 84 year old man constitutes an abuse to have the Landlord sign the document under duress. The Tenant disputes this stating that the Landlord's wife was present and protested against the Landlord signing the document, but that the Landlord signed the document after having the Tenant write it out. The Tenant states that no pressure was placed on the Landlord to sign the letter as the Landlord had retained the only copy of the letter and has entered it into evidence.

The Tenant is claiming loss of \$4,900.00 for a van that was removed from the property and destroyed. The Landlord states that he filed notices in the building lobby and on the van on March 5 and again on March 15, 2011 to notify the Landlord. There are 10 Tenants and 5 parking stalls. There are no pre-assigned stalls and the spaces are on a first come, first serve basis. The Landlord states that he was first notified by the Tenant when the vehicle was removed on March 25th or 26th. The Tenant did not realize that the vehicle was gone until he saw a discarded notice in the recycling bin in the lobby. The Tenant states that he never saw any of the notices on the vehicle or lobby area. The Landlord upon notification assisted the Tenant with locating the vehicle once they were notified. The Tow Company, Drake Towing removed the vehicle on March 24, 2011 as shown on the Tow Receipt. The vehicle was towed to Amix Recycling on March 25, 2011 where it was scrapped. Neither party can explain how the vehicle was scrapped without the registered owner being present upon the vehicle being presented by Drake Towing to Amix, which is contrary to Amix's policies. The Tenant is also

seeking \$5,000.00 for tools left in the vehicle and \$2,500.00 in revenue for a lost job opportunity. The Tenant gave direct testimony that he has been on income assistance for the last 8 months and has not worked in his trade for that long. The Tenant has not provided an itemized list of tools lost from the vehicle and has only provided some receipts to these tools. The Tenant states that all of his receipts were kept in the vehicle. The Tenant has filed a letter from a potential employer, but has not provided any details of the lost opportunities or stated the amount of this loss. The Tenant has not provided any details of his losses.

The Landlord has also made a monetary claim for unpaid rent of \$1,300.00 for the months of May and June 2011. The Landlord has established that rent was unpaid for these months through the service of the 10 day notice to end tenancy for unpaid rent where an order of possession is granted to the Landlord. The Tenant states that he was entitled to not pay the rent due to an agreement between the Landlord and himself. The Tenant refers to the letter submitted by the Tenant agreeing to compensation due to the removal of the van. The Landlord disputes this stating that the letter was obtained through duress on the Landlord. The Landlord states that the Tenant was crying and felt sorry for him.

Analysis

As noted above, the Landlord is entitled to an order of possession. The Tenant must be served with the 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 order of that Court.

I find that the Tenant has failed to show how the Landlord was negligent in dealing with the removal of the van from the property. The Landlord posted notices on the vehicle and in the lobby for almost 3 weeks before the vehicle was removed. Further the Tenant has failed to show how the Landlord was responsible for the destruction of the van. I find that the Tenant has failed to provide any details of claim for the missing tools and for the lost job opportunities. Ultimately the loss of the job opportunities, tools and the van cannot be shown to be through the negligence of the Landlord. For all of these reasons, I dismiss the Tenant's monetary claim.

Based upon all of the facts provided by both parties and on a balance of probabilities, I prefer the evidence of the Landlord over that of the Tenant. I don't find it reasonable that the Landlord would offer 5 months of free rent and \$200.00 in cash for an incident that was not through their negligence. As such, the 10 day notice to end tenancy and

the direct testimony of the Tenant has established that the Tenant owes the Landlord rent of \$650.00 for each of the months May and June. The Landlord has established a claim for \$1,300.00 in unpaid rent. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$312.50 deposit and \$10.99 in accrued interest to date of this judgement in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$976.60. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted an order of possession and a monetary order for \$976.60. The Landlord may retain the security deposit.

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 03, 2011.

Residential Tenancy Branch