

## **DECISION**

Dispute Codes      OPC, MND, FF

### Introduction

This is an application by the Landlord for an order of possession resulting from a 1 month notice to end tenancy for cause, a request for a monetary order for damage to the unit, site or property and recovery of the filing fee.

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

At the beginning of the hearing, the Tenant stated his intent to vacate the rental unit by the end of the month. During these discussions, both parties came to a mutual agreement to end the tenancy on June 30, 2011 at 1:00 pm. The Landlord made an oral request for an order of possession to reflect this. The Tenant did not dispute. Both parties agreed as part of the mutual end to the tenancy that the Tenant would return the keys to the rental unit via the Open Door Law Corporation Offices at 125- 1030 Denman Street, Vancouver, B.C., on June 29, 2011 at 1:00 pm or earlier. The Landlord is granted an order of possession to reflect this mutual agreement.

The Landlord's counsel has made a request to amend the application for dispute and any documents in reference to the Tenant's name to Khalil Tale from Khalil Tate. The Tenant and his counsel have made no dispute. The name amendment is granted to reflect that the proper spelling of the Tenant's name to be Khalil Tale.

### Issue(s) to be Decided

Is the Landlord entitled to a monetary order for damage to the unit, site or property?

### Background and Evidence

This tenancy began on December 29, 2010 on a fixed term tenancy as shown in the submitted copy of the signed tenancy agreement. The monthly rent is \$1,750.00 payable on the 29<sup>th</sup> of each month and a security deposit of \$1,750.00 was paid on December 29, 2010.

The Landlord states that the Tenant was served with the notice of hearing and evidence packages by registered mail on June 8, 2011. The Landlord states that the 1 month

notice to end tenancy for cause was delivered by registered mail on May 18, 2011. The Landlord has provided confirmation from the Canada Post website of a signature of a successful delivery on May 21, 2011. The Tenant has confirmed receipt of the notice of hearing and evidence package through his counsel. The Tenant has filed no evidence.

The Landlord has made a claim for \$11,986.28 for extraordinary damage caused by the Tenant to the unit, site or property. The Landlord claims that the Tenant placed excessive toilet paper in the toilet causing a clog/backup of water to flood the rental unit. The Landlord claims that the Tenant had the exclusive care and control of the rental unit and failed to disclose the emergency nature of the flood. The Landlord states in his affidavit material that he was informed by the Tenant at approximately 1:00 pm on April 13, 2011 that the toilet was plugged and that there was water coming from the toilet. The Landlord states that he suggested to the Tenant that he should unplug the toilet. And that the Tenant then informed the Landlord that the toilet was unplugged and that he had to go to school because of an exam. The Tenant disputes this stating that he contacted the Landlord as well as the building security guard who attended the rental unit to assist with the toilet and then left. The Landlord states that he attended the rental unit with the permission of the Tenant to view the apartment at approximately 5:30pm and was later joined by the Tenant and then the building manager. The Landlord then states that this is when he discovered water on the hardwood floors and some water on the bathroom tiled floor. The Landlord states that when he stepped on the living room hardwood floors that water touched his feet with each step. The Landlord states that water leaked to unit 902 directly below that of the Landlord's rental unit #1002. The building manager attended the rental unit and tested the toilet and determined that it was functionally normally. The Landlord refers to engaging a company called Green Choice Plumbing and heating ltd. on May 20, 2011 to inspect the toilet that determined that there was nothing found to cause a water backup.

The Landlord has submitted home depot receipts totalling \$1,334.88, contractor repair invoices for unit #1002 for \$4,729.27, restoration services for \$3,000.00, hotel invoices for the Tenant totalling \$1,401.44 and a contractor repair invoice for the damaged unit #902 for \$1,178.77. The total claim with invoices total \$11,644.32. There is no other apparent evidence to show the difference of the \$341.96 from the Landlord's claim amount.

### Analysis

As both parties have attended the hearing by conference call and the Tenant has confirmed receiving notice of hearing and evidence package I am satisfied that both have been properly served with the notice of hearing and any evidence packages.

Neither party has submitted any evidence to support their submissions on events. I find that this ultimately comes to credibility. On this basis, I prefer the evidence of the Landlord over that of the Tenant. As such, I find that the Landlord has established a monetary claim for \$11,644.32. This includes the hotel costs for the Tenant and the repair costs for the unit below at #902. I find that the Tenant was in care and control of the rental unit and that there was no effort made to mitigate the loss by informing the Landlord of the emergency nature of the flood. The Landlord is entitled to the recovery of the \$100.00 filing fee. I order that the Landlord retain the \$1,750.00 security deposit in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$9,994.32. 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 by mutual agreement to end the tenancy on June 30, 2011 at 1:00 pm.

The Landlord is granted a monetary order for \$9,994.32. 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 29, 2011.

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Residential Tenancy Branch