

DECISION

Dispute Codes OPR, MNR, ET

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- an early end to this tenancy and an Order of Possession pursuant to section 56.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The male tenant (the tenant) confirmed that the tenants received the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the first 10 Day Notice) sent on May 5, 2011 by registered mail. The tenant confirmed that the tenants received a copy of the landlords' dispute resolution hearing package sent by registered mail on May 27, 2011. I am satisfied that these documents and the landlords' written evidence package were served to the tenants in accordance with the *Act*.

The tenant also confirmed that the tenants received a second 10 Day Notice to End Tenancy for Unpaid Rent owing for June 2011, sent by the landlord on June 13, 2011. The tenant also confirmed that the tenants received the landlords' 1 Month Notice to End Tenancy for Cause, sent by registered mail on May 27, 2011. I find that these documents were served to the tenants in accordance with the *Act*.

At the hearing, I confirmed with the landlords that they did not amend their application for dispute resolution to include either of these Notices in their application for dispute resolution. As such, the landlords' request to end this tenancy and obtain an Order of Possession is limited to the matters in dispute at the time of the landlord's May 19, 2011 application, that being the first 10 Day Notice.

In their application, the landlords clearly indicated that they were seeking a monetary Order for \$950.00 and outlined the details of this request for a monetary Order in the Details of the Dispute section of that application. I asked the landlords to clarify their application as it was unclear from their application whether they had checked a box indicating that they were seeking a monetary Order for unpaid rent. The parties agreed that they both understood that the landlords' application for dispute resolution included a request for a monetary Order for unpaid rent. On this basis, I revised the landlords' application for dispute resolution to reflect that the landlords were seeking a monetary Order.

At the hearing, the landlords testified that that they misunderstood the application form when they applied for an early end to this tenancy and an Order of Possession on that basis. They withdrew their application for an early end to this tenancy at the hearing and I have not considered that application.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent?

Background and Evidence

This month-to-month tenancy began on October 1, 2007. Current monthly rent is set at \$950.00, payable in advance on the first of each month. The landlords maintained that the tenants paid a \$475.00 security deposit on or about October 1, 2007. The tenant testified that he recalled that the tenants paid a total of \$950.00 in security and pet damage deposits to the landlords. The tenant admitted that he was not certain on this point and agreed to search the tenants' records to find their receipt for these deposits. I asked the tenant to fax these documents to me by 4:00 p.m. on June 24, 2011, or I would accept that the only deposit retained by the landlords is the \$475.00 security deposit which constitutes half of the monthly rent for this rental unit. As I received no faxed document from the tenant by that time and date, I conclude that the landlords hold only the tenants' \$475.00 security deposit plus interest.

In the first 10 Day Notice, the landlords identified \$2,350.00 in unpaid rent as owing. At the hearing, the parties confirmed that the tenants paid (or were credited for) \$1,250.00 towards the rent identified as owing in the first 10 Day Notice on May 12, 2011, which was accepted by the landlords for use and occupancy only. The parties agreed that the amount that remained owing as of May 12, 2011 was \$900.00. This amount remained owing on May 19, 2011, when the landlords applied for dispute resolution. The landlords' application for a monetary Order of \$950.00 was for the \$900.00 that remained owing at that time plus the landlords' \$50.00 filing fee. The landlords provided undisputed testimony that the tenants have not paid their June 2011 rent of \$950.00.

The tenant explained that he had decided to withhold rent payments because he was not satisfied with Landlord RB's attendance to his requests to repair certain features of the rental unit. The tenant said that he has been asking the landlords to fix many items in the rental unit, but the landlords have been tardy or unwilling to do so. He cited an example of a lack of hot water in his kitchen which he raised with the landlords many times near the beginning of this tenancy to little avail. He said that he was only able to get that issue resolved when he obtained the landlords' permission to hire a plumber and reduce the tenants' rent by the cost of the plumbing repairs he paid.

The tenant testified that he considered that items needing repair or renovating in his rental unit are emergency repairs that allow him to withhold his monthly rent. He included the following items in his list of work that the landlord has refused to fix which require the tenant's emergency repairs:

- repair a leaking toilet due to a malfunctioning handle;
- paint some of his rental unit, as the existing paint in one of his rooms has three different shades of brown;
- repair of a back door.

Although the tenants made no application for dispute resolution themselves, the tenant said that he wanted to be allowed "to do simple renovations himself" and charge the landlords at a minimum wage rate "to repair, paint and fix" his rental unit.

Analysis - Order of Possession

The tenant provided contradictory testimony as to why the tenants have not paid all of the \$2,350.00 identified as owing in the first 10 Day Notice. At some times during the hearing, he testified that the tenants were unwilling to pay rent because he was using the funds that would normally be paid for rent to the landlord to pay himself for repairs that he considered to be emergency repairs. He said that he was expecting to incur costs to repair various aspects of the rental unit to a condition where he and his family could live. He provided no receipts for any of these expenditures, nor is it clear that any of these repairs have been done. He admitted that he had never sent the landlords a written request to repair these items, nor had he obtained approval to go ahead with the current repairs he was planning to undertake. At other times in the hearing, the tenant testified that the outstanding rent has always been available to the landlords for pickup, but they have not chosen to attend the rental unit to obtain these payments. He claimed that he called the landlords to come to his rental unit to pick up the rent, but the landlords have not agreed to do so. He said that the landlords have always visited the rental unit in the past to obtain the tenants' rent but have discontinued doing this without letting the tenants know that they were changing this process for rent payment.

The landlords did not dispute the tenant's claim that they routinely had to attend to the rental unit to obtain the tenants' rent. They said that they often had to do this because the tenants frequently failed to pay their rent on time, provided NSF cheques on occasion, or made partial payments. Once the tenants failed to pay their rent by the dates identified in the first 10 Day Notice, they opted to pursue recovery of the outstanding rent through the dispute resolution process provided by the *Act*.

I find that the tenants were clearly advised when the landlords started issuing 10 Day Notices to end this tenancy that they needed to make arrangements to pay all of their

rent within five days or the landlords would take steps to end this tenancy. I do not accept the tenant's inconsistent explanation that the tenants did not pay their rent because the landlords stopped coming to their rental unit to pick up their rental payments. Having received a 10 Day Notice seeking payment of a significant amount of unpaid rent, a reasonable person wishing to remain in a tenancy would either pay all of the rent outstanding within five days or apply for dispute resolution within that time frame if the person objected to the amount cited in the 10 Day Notice. The tenants did neither. At several points in the hearing, the tenant admitted to withholding rent on the because he interpreted the *Act* to allow him to do so if **he** felt that there were repairs that needed to be done to his rental unit that the landlord was refusing to undertake.

Section 33 of the *Act* allows a tenant to make "emergency repairs" in certain situations. These repairs must be urgent in nature, must be necessary for the health or safety of anyone or for the preservation or use of the residential property, and must be for major purposes (e.g., major leaks in pipes or the roof; repairs to the primary heating system, etc.). I find that the types of repairs identified by the tenant at the hearing as necessary fall far short of those that would qualify as "emergency repairs" under the *Act*.

A tenant can also apply for dispute resolution to obtain an order requiring a landlord to conduct repairs that do not fall within the category of an emergency repair. If repairs are not conducted in a timely fashion, a Dispute Resolution Officer (DRO) can authorize a tenant to withhold a portion of the rent until such time as the repairs are completed. If a service or facility has been withdrawn by a landlord, a DRO can also issue an order allowing a tenant to reduce rent for this loss of service or facility agreed to as part of the residential tenancy agreement. In this case, the tenants did not make an application for dispute resolution seeking any of these orders.

Based on the tenant's sworn testimony, he appears to believe that the *Act* allows him to conduct unauthorized work on the rental unit and pay himself for this work out of the rent that he is obligated to pay the landlords. The *Act* does not allow tenants to arbitrarily withhold rent to enable tenants to conduct repairs and renovations that they think are necessary without obtaining authorization to do so. I find that the tenants are without any legal authority to withhold any portion of their rent for repairs or renovations they have either commenced or are planning to commence.

The tenants failed to pay all of the \$2,350.00 in rent identified as owing within five days of receiving the first 10 Day Notice. The tenant agreed that \$900.00 of this amount remains owing plus another \$950.00 for June 2011. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of

these actions within five days led to the end of this tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by May 21, 2011. As that has not occurred, I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

Analysis – Monetary Award

Based on the undisputed evidence regarding the payment of rent, I find that the tenants continue to owe \$900.00 from the \$2,350.00 identified as outstanding rent in the landlord's first 10 Day Notice. I allow a monetary award in the landlords' favour of \$900.00 for this unpaid rent. As noted above, I find no basis for the tenants' claim that they are entitled to reduce their rent for repairs that need to be performed or for a loss of services or facilities that the landlords were required to provide under their tenancy agreement.

Based on the undisputed evidence, I allow an additional \$950.00 in rent that became due on June 1, 2011 since the landlords issued their application for dispute resolution.

I allow the landlords to retain \$475.00 from the tenants' security deposit plus interest in partial satisfaction of this monetary award.

Since the landlords have been successful in their application, I allow them to recover their filing fee for this application from the tenants.

Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary award in the landlords' favour in the following terms which allows the landlords to recover unpaid rent and the filing fee for their application, less the value of the tenants' security deposit plus interest I allow the landlords to retain.

Item	Amount
Unpaid Rent as of May 13, 2011	\$900.00
Unpaid June 2011 Rent	950.00
Less Security Deposit plus Interest (\$475.00 + \$8.95 = \$483.95)	-483.95
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,416.05

The landlords are provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.