



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPT, LAT, OPR, MNR, FF

Introduction

This hearing dealt with applications from the landlord and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- authorization to change the locks to the rental unit pursuant to section 70; and
- an Order of Possession for the rental unit pursuant to section 54.

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

Since the parties entered two separate versions of the same 10 Day Notice of October 17, 2011 into written evidence, I asked the parties to clarify which 10 Day Notice they were referring to in their applications. The landlord first testified that he handed the tenant a copy of the 10 Day Notice to the tenant on October 4, 2011, accompanied by the police. He said that he mistakenly dated the 10 Day Notice October 17, 2011, thinking that he was supposed to enter the effective date of the end to the tenancy beside his name at the bottom of this Notice. The female tenant (the tenant) said that the landlord handed her the 10 Day Notice on October 17, 2011. She said that the 10 Day Notice she received, the one she entered into written evidence, was dated October 17, 2011, and identified October 26, 2011 as the effective date to end her tenancy. At this point, the landlord changed his previous testimony, stating that he was mistaken and that he actually handed the 10 Day Notice to the tenant on October 17, 2011, as the tenant was claiming.

The landlord confirmed that he received a copy of the tenant's dispute resolution hearing package sent by the tenants by registered mail on November 3, 2011. The

tenant confirmed that on November 18, 2011, she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on November 3, 2011. I am satisfied that the parties served the above documents to one another in accordance with the *Act*.

At the hearing, I clarified the spelling of the tenants' names. I agreed to revise the spelling of the female tenant's name, the only name listed on the landlord's application for dispute resolution, to the spelling identified above.

The female tenant (the tenant) testified that the tenants are planning to vacate the rental unit on November 26, 2011, as per a notice of violation issued by the municipality. Since the tenants are planning to vacate the rental unit, the tenant said that there was no need to consider the tenants' application for dispute resolution and withdrew that application.

The landlord testified that he was still interested in obtaining a monetary Order and an Order of Possession to be used in case the tenant(s) do not vacate the rental unit by November 26, 2011.

Issues(s) to be Decided

Should the landlord be issued an Order of Possession? Is the landlord entitled to a monetary Order for unpaid rent and utilities? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The parties confirmed that this tenancy commenced on October 4, 2011. Monthly rent was set at \$650.00, payable on the first of the month. Although there is no signed tenancy agreement, the parties agreed that the tenant(s) was supposed to pay a \$325.00 security deposit for this tenancy.

The tenant testified that her church provided a \$350.00 cheque that covered the security deposit and \$25.00 of rent for October 2011. The tenant testified that she gave the landlord the \$350.00 cheque and \$540.70 in cash on October 4, 2011, at approximately 5:45 p.m. She entered oral and written evidence that this amount was the pro-rated rental amount owing until the end of that month (i.e., less the 4 days at the beginning of October 2011 before her tenancy commenced). Her adult daughter gave sworn testimony that she witnessed her mother hand these payments to the landlord and request a receipt. Both the tenant and her daughter testified that the landlord refused to issue the tenant a receipt as they had requested. The tenant said that she wanted credit for her security deposit to be applied to any monetary award issued to the

landlord. The tenant confirmed the landlord's claim that she did not pay any rent for November 2011.

The landlord testified that the only payments he received from the tenant were a \$350.00 cheque and \$150.00 in cash, both received on October 4, 2011. He said that he had prepared receipts for these payments but the tenant did not pick them up. The only written evidence entered by the landlord was an incorrect copy of the 10 Day Notice.

The landlord applied for a monetary award of \$1,125.00, the amount of rent he claimed was owing for October and November 2011. In this 10 Day Notice, he identified \$275.00 in rent and \$200 owing for utilities for October 2011. The parties agreed that the tenant did not pay any of the \$630.00 in rent owing for November 2011.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the parties agreed that the tenant paid \$350.00 in a cheque on October 4, 2011 and did not pay any portion of the November 2011 rent. The issue in dispute narrows to whether the tenant paid \$150.00 in cash on October 4, 2011 or \$540.00 in cash that day.

Given the conflicting testimony, much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in

such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions...

In addition to the manner and tone (demeanour) of the witness' evidence, I have considered their content, and whether it is consistent with the other events that took place during this very short tenancy.

The tenant's demeanour during the hearing has convinced me of her credibility. She answered questions asked of her in a clear and candid manner, and never wavered in her version of what happened. She also made some important admissions, including the fact that she did not pay any rent for November 2011, which suggested that she was being truthful. Moreover, her evidence was corroborated with details by her daughter who witnessed her mother hand the landlord the October 2011 rent payment.

The landlord's evidence, on the other hand, was not as credible. He was unclear on which 10 Day Notice he issued to the tenant and changed his testimony on both the date that he issued that Notice and the contents of that Notice once the tenant provided her oral testimony in this regard. He provided few details other than his claim that the tenant did not pay her October and November rent. As a landlord, he also bears responsibility for ensuring that a tenant receives a receipt for any cash payment made. He did not do so and provided nothing in writing to substantiate his claim that he had prepared receipts but the tenant refused to pick them up.

I have considered the testimony of the parties in an effort to establish credibility in relation to the disputed testimony. I have also considered the burden of proof, which falls to the landlord, as the applicant for this monetary Order. The real test of the truth of the information provided of a witness must align with the balance of probabilities. In the circumstances before me, I find the version of events provided by the tenant to be more probable given the conditions that existed at the time. I also find that the tenant's written evidence aligns more closely with her version of what happened in this short tenancy than that presented by the landlord. Considered in its totality, I find the evidence presented by the tenant more credible than that of the landlord.

The tenant's oral and written testimony, combined with the other evidence, has persuaded me on the balance of probabilities that she did pay the landlord a total of \$890.70 on October 4, 2011 at the commencement of this tenancy. Since the tenancy is about to end, I will not apply this payment to the tenant's security deposit, but will apply it to the monthly rent that she should have paid for October 2011 and for the tenant's unpaid November 2011 rent. I find that the tenant's pro-rated for rent for

October 2011 is \$566.13 ($\$650.00 \times 27/31 = \566.13) and the November 2011 rent is \$650.00. For these reasons, I find that the landlord is entitled to a monetary Order in the amount of \$375.43, which includes recovery of the landlord's filing fee for his application. These calculations are based on an application of all of the funds paid by the tenant on October 4, 2011 to the tenant's rental responsibilities for this entire tenancy. I find that there has been no security deposit paid by the tenant for this tenancy.

Conclusion

The tenants' application is withdrawn.

The landlord is provided with a formal copy of an Order of Possession effective by 3:00 p.m. on November 26, 2011. 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 find that the landlord is entitled to a monetary Order against the female tenant, the only tenant identified in his application. This monetary Order is issued in the following terms which allows the landlord to recover unpaid rent (including utilities included in the rent) and his filing fee for this application, less the value of the tenant's payments:

Item	Amount
Rent Owed for October 2011	\$566.13
October 4, 2011 Payment by Tenant(s)	-890.70
Unpaid November 2011 Rent	650.00
Recovery of Landlord's Filing Fee	50.00
Total Monetary Order	\$375.43

In reaching this determination and as this tenancy will be ending in a few days, I find that all of the tenant's October 4, 2011 payment should be applied to rent that was owing by the time the landlord's application for dispute resolution was heard. I find that no security deposit has been applied or collected for the purposes of this much disputed and short-term tenancy.

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant 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*.

Dated: November 21, 2011

Residential Tenancy Branch