



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MT, CNC, MNDC, FF

Introduction

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

By the landlord: as an application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; to keep the security deposit; and to recover the filing fee associated with his application.

By the tenant: as an application for more time to make an application to cancel a Notice to End Tenancy; to cancel a Notice to End Tenancy; a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; and to recover the filing fee associated with this 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.

At the outset the tenant stated that she gave the landlord notice that she would be moving out on January 31st, 2011. The landlord agreed to end the tenancy on that date provided that rent is paid in full.

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 keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Should the Notice to End Tenancy be set aside?

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

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a basement suite. Pursuant to a written agreement, the tenancy started on March 1st, 2011. The rent is \$800.00 per month payable on the first of each month. The tenant paid a security deposit of \$400.00 and a pet damage deposit of \$200.00.

The tenant testified that she did not pay rent for December 2011 because the landlord damaged her freezer which she had to replace. She stated that the landlord also towed her car that month and therefore she could not afford to pay the rent. She said that she paid \$500.00 for January and that the balance of the rent for that month would be paid on the 10th.

The landlord made reference to a previous Residential Tenancy Branch decision dated December 23rd, 2011, in which the claim concerning the freezer had been addressed and where the tenant's application was dismissed. Nevertheless, the tenant was insistent in re-arguing the issue at this hearing.

The landlord stated that the tenant's car had been sitting in the driveway without proper insurance since 2009, contrary to the tenancy agreement which states that the tenant's vehicle must be insured, registered, and in good working order. The tenant stated that

the landlord did not give her proper warning that her car would be towed, and that the car had a 10 Day temporary permit when it was towed. The landlord argued that the car's permit was displayed only after being towed. Concerning the rent for January 2012, the landlord stated that he did not receive anything yet.

Analysis

Section 26(1) of the *Act* specifies in part that a tenant must pay the rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*.

Since the landlord agreed to end the tenancy on January 31st, 2012, I grant the landlord an Order of Possession effective February 1st, 2012. Based on the parties' testimony, I accept that the tenant did not pay rent for December 2011. As for January 2012, I have no evidence that any portion of the rent was paid; therefore I will grant the landlord a monetary order for the full rent; however any portion paid by the tenant thereof in the interim must be deducted from that amount.

Concerning the freezer, Section 77 of the *Act* states that, except as otherwise provided in the *Act*, a decision or an order of the Director is final and binding on the parties. Therefore this aspect of the tenant's application has already been decided; on the basis of "rez judicata" I decline to hear previously heard evidence and no subsequent determination will be made. Accordingly, I dismiss this aspect of the tenant's claim.

Concerning the claim for a haircut, I find no basis on which to make a decision under the *Act* over this issue and therefore I also dismiss this aspect of the tenant's claim.

Turning to the towing charge; the tenancy agreement does state that the car must be insured and registered, however it does not state that failure to comply would result in the vehicle being impounded. I find that the landlord did not have grounds to impound the tenant's car without first notifying the tenant in writing and providing the tenant with reasonable time to tend to the issue. Therefore I do not find that the tenant violated the

tenancy agreement because the agreement did not provide the tenant with an opportunity to resolve the problem. The tenant submitted the towing invoice for \$150.00 and I award the tenant this aspect of her claim.

Conclusion

I grant the landlord an Order of Possession effective no later than 1:00PM, February 1st, 2012. If necessary, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The tenant established a claim of \$150.00. The landlord established a claim of \$1600.00 less \$150.00 awarded to the tenant for a balance of \$1450.00. Since the landlord kept the tenant's \$600.00 security deposit, pursuant to Section 72 of the Act, I set off the amount awarded to the landlord against the tenant's security deposit and grant the landlord a monetary order for the balance of \$850.00.

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

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: January 03, 2012.

Residential Tenancy Branch