



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

For the tenant: CNR, MNDC, MNSD, OLC, ERP, RP, PSF, LRE, OPT, LAT, RR

For the landlord: OPR, MNR

Introduction

This hearing was convened in response to an application for Review by the tenant, granting a participatory Review hearing of a Direct Request Decision of the landlord's application for an ex parte Order of Possession and a Monetary Order for unpaid rent in the amount of \$875. In the midst of the foregoing the tenant applied on February 09, 2012 under the Residential *Tenancy Act* (the Act) for an abundance of Orders, including to Cancel a Notice to End for unpaid rent - dated February 02, 2012. The tenant still resides in the rental unit. The landlord orally requested an Order of Possession effective immediately.

Both parties attended the hearing and were given opportunity to present all relevant evidence before the hearing and provide testimony in respect to their claims and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Preliminary matters

The landlord requested to orally amend their application respecting their application for a monetary order. The landlord requested that if I uphold their application and that if I find the landlord is owed unpaid rent that I allow the landlord a monetary order for all unpaid rent to date in the amount of \$1750.00. I find it appropriate that if, based on the evidence, I find the landlord is owed unpaid rent that I grant the landlord all rent to which the landlord is entitled.

In addition, I will not deal with all the dispute issues that the tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together. Therefore, I will deal with the tenant's request to set aside, or cancel the

landlord's Notice to End Tenancy for unpaid rent. I dismiss the balance of the tenant's claim with liberty to re-apply.

Therefore,

The tenant's application is being heard pursuant to their application as follows:

1. To cancel a Notice to End Tenancy for Unpaid Rent – Section 46

The landlord's application is being heard pursuant to a review hearing of their application as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;

Issue(s) to be Decided

Is the Notice to End Tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amount claimed?

Background and Evidence

The parties' undisputed evidence is that the monthly rent payable in this tenancy is \$875 payable in advance on the first day of each month. The tenant testified they owe the landlord \$1750.00 comprised of unpaid rent for January and February 2012, and that they have not paid this rent. The tenant effectively stated they failed to pay \$875 of rent payable in the month of January 2012 and failed to pay rent on February 01, 2012. The landlord testified they gave the tenant a Notice to End Tenancy (NTE) for non-payment of rent in January 2012 and then again on February 02, 2012. The landlord stated they posted the Notice to End on February 02, 2012, and the tenant's application for dispute resolution stated they found it posted after that date. The tenant and landlord each testified that the outstanding arrears in rent in the sum of \$1750 have not been paid.

Analysis

Based on the testimony of both parties, and on the preponderance of the evidence, I find that the tenant was served with a notice to end tenancy for non-payment of rent for January 2012, and I find that notice to be valid. I further find that the landlord served the tenant with a notice to end tenancy for non-payment of rent for February 2012, and I find that notice to be valid. The tenant has not paid the outstanding rent, and despite

their application to dispute the notices to end, they have no acceptable evidence upon which to dispute that the rent has not been paid. The tenant is not in possession of an Order from a dispute Resolution Officer permitting the tenant to keep the rent, or that they held back the rent with prior notice to the landlord, for the cost of emergency repairs. The landlord's Notice to End is upheld.

Section 26 of the Act, in part, states as follow,

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.
- (2) A landlord must provide a tenant with a receipt for rent paid in cash.

In addition, Section 55 of the Act, in part, states as follows,

Order of possession for the landlord

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
- (a) the landlord makes an oral request for an order of possession, and
 - (b) the director dismisses the tenant's application or upholds the landlord's notice.
- (4) Despite section 61 [*setting down dispute for hearing*], in the circumstances described in subsection (2) (b), the director may, without holding a hearing,
- (a) grant an order of possession, and
 - (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

As a result, the tenant's application to cancel the Notice to End for unpaid rent dated January 02, 2012 and February 02, 2012 **is hereby dismissed** and the landlord's Notices are upheld. Based on the above facts I find that the landlord is entitled to an **Order of Possession**.

I also find that the landlord has established a monetary claim for **\$1750.00** in unpaid rent. The landlord has not applied to have the monetary claim offset by the security deposit; therefore, it must be administered at the end of the tenancy as per Section 38 of the Act.

Conclusion

I uphold and confirm the Order of Possession to the landlord dated January 30, 2012. The Order of Possession dated January 30, 2012 stands and has full effect, and states the order is **effective 2 days from the day it is served upon the tenant**. The landlord has been given this order. The tenant must be served with this 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 an order of that Court.

I set aside the original Monetary Order, and **I grant** the landlord a new Order under Section 67 of the Act for **\$1750.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order 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: February 28, 2012

Residential Tenancy Branch