



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, CNR, MNDC, ERP, RP, PSF, RR

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; and to recover the filing fee associated with this application.

By the tenant: as an application for cancellation of a 10 Day Notice to End Tenancy; a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement and for the cost of emergency repairs; to order the landlord to make emergency repairs; to order the landlord to make repairs to the unit; to provide services or facilities required by law; and to allow a tenant to reduce rent for repairs, services, or facilities agreed upon but not provided.

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.

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 recover the filing fee?

Should the notice to end tenancy be set aside, and should the tenancy continue?

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

Should the landlord be issued orders as requested by the tenant?

Background and Evidence

The rental unit consists of an apartment in a multi-unit complex. The tenancy started in March 2008. The rent is \$550.00 per month and the tenant paid a security deposit of \$225.00.

The landlord applied for a monetary award of \$4285.00 in unpaid rent, stating that the tenant has not paid since October 2011. The landlord testified that the tenant has financial difficulties, and that he has been lenient in the past to allow the tenant to catch up with arrears. The landlord referred to copies of text messages from the tenant, which he described as false promises to pay the unpaid rent. He submitted a claim of unpaid rent for the past 7 consecutive months, with an additional outstanding balance of \$435.00 for a claim totalling \$4285.00.

The tenant testified that the landlord's information is misleading and that she paid the rent. In her documentary evidence, she referred to copies of rent receipts for the unpaid months claimed by the landlord. The landlord stated that he received the tenant's evidence, but he did not receive the receipts in question.

Concerning the remaining aspects of her claim, the tenant stated that she was no longer seeking a monetary order; she said that she did not expect the landlord to pay her, that she was moving out within 24 hours and that she would take her claim to another level of court.

Analysis

I have reviewed all the documentary evidence provided by both parties, including the receipts, UBC investigative findings, and plumbing invoice from the tenant's evidence. I note that the UBC toxicology investigator charged the tenant \$2149.51 for his work, and wrote that the tenant paid in cash. Likewise, the plumbing invoice was signed off as paid in cash in the same handwriting. The landlord's signature showing on tenant's receipts was also strikingly dissimilar for the months of unpaid rent than those where rent was paid, and the landlord's failure to receive them in his package of evidence is perplexing.

I am not aware that UBC conducts residential investigative reports for a fee. Notwithstanding, in view of these unexplained discrepancies, I find the landlord's testimony more credible than the tenant's and I accept that the tenant did not pay rent as claimed.

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. I find that the landlord had grounds to issue the notice to end the tenancy and that he is entitled to an order of possession.

I also find that the landlord is entitled to recover the loss of rental income as claimed.

Conclusion

The tenant's application is dismissed.

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant.

This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord established a claim of \$4285.00. I authorize the landlord to retain the tenant's \$225.00 security deposit for a balance owing of \$4060.00. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$4110.00.

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: April 16, 2012.

Residential Tenancy Branch