



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the landlord and an application by the tenant.

Both parties appeared in the conference call hearing and participated with their submissions and testimony.

The tenant sought to cancel a Notice to End for Cause (Notice to End), to suspend the landlord's right to enter, make emergency repairs, and to allow the tenant to reduce rent, and recover the filing fee. The tenant testified that they vacated the rental unit on May 18, 2012. As the tenancy has come to an end, the items for which the tenant made application are no longer valid. Therefore, I preliminarily **dismiss** the tenant's application, *without leave to reapply*.

The landlord sought an Order of Possession due to unpaid rent, a Monetary Order to recover rental arrears and inclusive of recovery of the filing fee associated with this application, and an Order to retain the security deposit in partial satisfaction of the monetary claim. The landlord further made application for damages to the unit and compensation for loss of revenue for June 2012 – both of which are premature, and I preliminarily **dismiss** these portions of the landlords' claim, *with leave to reapply*.

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 amounts claimed?

Background and Evidence

The testimony of the landlord and the tenant is that the tenancy began on February 01, 2012. Rent in the amount of \$1000 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$500. The tenant failed to pay rent in the month of May 2012, and on May 02, 2012 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The landlord's monetary claim is for the rent arrears for the month of May 2012 in the amount of \$1000. The landlord further seeks an Order of Possession as they claim that someone is still residing in the rental unit, despite the tenant's claim they have vacated.

The tenant does not dispute that the rent has not been paid and does not possess any proof of such, or an Order from an Arbitrator allowing them to keep all of the rent, or that the tenant held back the rent, with prior notice to the landlord for the cost of emergency repairs.

Analysis

Based on the testimony of the landlord and the tenant I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The tenant has not paid the outstanding rent. **Section 26** of the Residential Tenancy Act (the Act), in part, states as follows.

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.

Based on the above facts I find that the landlord is entitled to an **Order of Possession**. As for the monetary Order, I find that the landlord has established a claim for **\$1000** in

unpaid rent. The landlord is also entitled to recovery of the **\$50** filing fee, for a total entitlement of **\$1050**. The security deposit will be off-set from the award made herein.

Conclusion

The tenant's application is **dismissed**.

I grant an Order of Possession to the landlord **effective 2 days** from the day it is served upon the tenant. 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 Order that the landlord retain the security deposit of **\$500** in partial satisfaction of the claim and **I grant** the landlord an order under Section 67 of the Act for the balance due of **\$550.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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: May 22, 2012

Residential Tenancy Branch