



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Tenant CNR, ERP, RP, LRE, FF, O Landlord OPR, MNR, MNDC, MNSD, FF
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Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenant.

The Landlords filed seeking an Order of Possession, a monetary order for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenants filed to obtain an order to cancel the Notice to End Tenancy and if successful; for the Landlord to do emergency repairs and general repairs to the unit site or property, to restrict the Landlord's entry into the rental unit, to recover the filing fee for this proceeding and for other considerations.

Service of the hearing documents by the Landlord to the Tenant were done by posting them on the door of the Tenants unit on April 25, 2012 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlords were done by personal delivery on April 20, 2012 in accordance with section 89 of the Act.

Both parties confirmed the receipt of the other parties' hearing package.

At the start of the Hearing the Dispute Resolution Officer informed the Parties that the hearing will deal with the Landlord's application to end the tenancy, the Landlord's monetary claim for unpaid rent and the Tenant's application to contest a Notice to End Tenancy for Unpaid Rent. The Tenants applications for emergency repairs, other repairs and to restrict the Landlord from entry into the rental unit are separate and unrelated dispute to this application. In section 2.3 of the Residential Tenancy Branch Rules of Procedure (Dismissing unrelated disputes in a single application) a Dispute Resolution Officer may dismiss unrelated disputes within an application. The Tenant's applications for emergency repairs and other repairs are dismissed with leave to reapply.



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Issues to be Decided

Landlord:

1. Are the Landlords entitled to end the tenancy?
2. Is there unpaid rent and if so how much?
3. Are the Landlords entitled to compensation for unpaid rent and if so how much?
4. Are the Landlords entitled to retain the Tenant's security deposit for unpaid rent?

Tenant:

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on July 1, 2005 as a fixed term tenancy with an expiry date of June 30, 2006 and then renewed as a month to month tenancy. Rent is \$935.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$390.00 on June 29, 2005.

The Landlord said that the Tenant did not pay rent of \$935.00 for the month of April, 2012, when it was due and as a result, on April 12, 2012, he posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 12, 2012 in the door slot of the Tenant's rental unit. Further the Landlord said the Tenant has not paid the May, 2012 rent of \$935.00. The Landlord said if his application is successful he is requesting an Order of Possession for as soon as possible and the Landlord said he is willing to reduce his monetary claim from \$1,870.00 to \$935.00 for the April, 2012 rent and the Tenant's security deposit in the amount of \$390.00 as full settlement of the May, 2012 rent of \$935.00.

The Landlord also said he is seeking to recover the \$50.00 filing fee for this proceeding. The Landlord said his total claim is for \$1,325.00 in unpaid rent and the \$50.00 filing fee for a total claim of \$1,375.00.

The Tenants said the unpaid rent is \$635.00 for April, 2012 because of an agreement made with the Landlord and \$935.00 for May, 2012. The Tenant said he believes the total unpaid rent is \$1570.00. The Landlord said that agreement is not in effect anymore as the Tenant did not pay the reduced amount of rent when it was due. The Tenant continued to say that he did not pay the rent because the Landlord has not repaired the rental unit correctly. The Tenant said there was a burst pipe in the unit and

after the Landlord repaired the damage the unit is full of mould and he now has health issues. As a result the Tenant said he did not pay his rent.

Analysis

Section 26 (1) of the Act says 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

I find that the Tenant has not paid the overdue rent and the Tenant did not have the right to withhold a part or all of the unpaid rent. Consequently, I dismiss the Tenant's application to Cancel the Notice to End Tenancy for Unpaid Rent, as he agree he has unpaid rent that he has withheld from the Landlord.

I accept the Landlord's testimony and evidence that there is unpaid rent in the amount of \$935.00 for April, 2012 and that the Landlord will accept the reduced amount of \$390.00 for the May, 2012 unpaid rent. Consequently, I find for the Landlord and award the Landlord a monetary claim for unpaid rent of \$1,325.00.

Further, I find that the Tenant has not paid the overdue rent and has been unsuccessful in cancelling the 10 Day Notice to End Tenancy for Unpaid Rent; therefore I find pursuant to section 55 (2) (b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit plus accrued interest in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:



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	Rent arrears:	\$1,325.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$1,375.00
Less:	Security Deposit	\$ 390.00	
	Accrued Interest	\$ 13.83	
	Subtotal:		\$ 403.83
	Balance Owning		\$ 971.17

Conclusion

An Order of Possession effective 2 days after service of the Order on the Tenant and a Monetary Order in the amount of \$971.17 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenant's application is dismissed without leave to reapply and the Tenant is ordered to bear the cost of \$50.00 for the application which he has already paid.

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*.

Residential Tenancy Branch