



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNR, MNDC, MNSD, RP, RR, 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; and to recover the filing fee associated with his 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; for the return of the security deposit; to order the landlord to make repairs; to allow the tenant reduced rent; 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 was informed that since the tenancy has not ended, his application for the return of the security deposit is premature and therefore I dismiss this aspect of the application.

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 orders for repairs be ordered to the landlord?

Is the tenant entitled to reduced rent?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a townhouse. Pursuant to a written agreement, the tenancy started on September 5, 2011. The rent is \$1600.00 per month and the tenant paid a security deposit of \$800.00. The landlord stated that he just received \$4850.00 to cover the unpaid rent for April 2012, and in compliance with a previous Residential Tenancy Branch decision and order dated April 3, 2012.

The landlord contends that the tenant did not pay the portion of rent for April 2012 within the 5 day time line of the notice to end tenancy and seeks an order of possession. In his documentary evidence, the landlord provided a copy of the said 10 Day Notice to End Tenancy served on the tenant on April 11, 2012 by posting the notice on the tenant's door. The tenant testified that he wrote the landlord a cheque for \$3250.00 and another one for \$1600.00 and that he posted them on the landlord's door. He said that the landlord did not negotiate either cheque by April 10, 2012, and that he put a stop payment and re-delivered a new cheque for \$4850.00 by the date of this hearing. The

landlord argued that she did not receive the first two cheques, and stated that this is a fabrication by the tenant to avoid eviction.

The landlord also said that the tenant has not paid rent for May 2012, which the tenant did not dispute. The tenant said that he wanted to raise his concerns with the lack of heat and wait for the outcome of this hearing, but that he has the money to pay the rent.

In his documentary evidence, the tenant provided a copy of the two cheques posted on the landlord's door. The rent cheque for April was dated April 10, 2012. The tenant accused the landlord of ignoring the cheque in order to ensure that the notice to end tenancy is in effect.

The tenant testified that he has had no heat on the main floor of the unit throughout the winter. He stated that the only source of heat are two fireplaces, and that they are both defective. The tenant said that the landlord has made no attempts to make repairs, and that he has purchased two baseboards heaters in the interim.

The tenant claimed a rent reduction of \$500.00 due to the increase in hydro costs between October 2011 and March 2012. The tenant waived a \$30.00 monetary claim for repair to a garburator.

The landlord did not dispute that the fireplaces are defective, but argued that he cannot make the repairs because the tenant does not cooperate. He stated that specific measurements must be made, and that every time appointments are made the tenant is not available. The tenant said that he works from home and is more than available. The landlord said that he is more than willing to have the work completed.

Analysis

With the exception of the rental amounts being paid and owed to date, the parties' testimony is contradictory in every aspect. I find that having been issued a monetary order for unpaid rent and in the face of a 10 Day Notice to End Tenancy, in the

circumstances the tenant ought to have exercised extra diligence to ensure that the landlord received the unpaid rent within the time frame allowed by the notice. The tenant stated that the cheques were not cleared by April 10th and therefore he put a stop payment. The landlord's notice to end tenancy is dated April 11th; it was posted on the tenant's door on that date, which means that pursuant to the Act the tenant was deemed served by April 14th. I heard no evidence that the tenant endeavoured with the landlord to confirm receipt of the cheques. I find it uncharacteristic for the tenant not only to use such an unreliable method of payment, but to also wait nearly a month before re-issuing another cheque, as it would appear by the dates that the landlord did not receive the original cheques. Therefore I find that the landlord had grounds to issue the 10 Day Notice to End Tenancy.

Concerning unpaid rent, since it is not disputed that May rent is not paid to date I find that the landlord is entitled to a monetary order for that month's rent.

Turning to the tenant's claim for reduced rent; the fireplaces were defective and the tenant had to purchase heaters for alternative sources of heat. Under the Act the landlord is entitled to access the rental unit and to make inspections monthly. Since the problem existed from the start of the tenancy, I find that the landlord ought to have exercised that right upon the tenant to make the necessary repairs. The tenant provided his own source of heat at additional hydro costs, but that additional cost was not calculated or supported by receipts. That being said I award the tenant a rent abatement of \$50.00 per month for 6 months, specifically between October 2011 and March 2012 totalling \$300.00. That amount can be offset against the unpaid rent for May and I award the landlord a monetary order for the balance of \$1300.00.

Conclusion

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 \$1300.00 and pursuant to Section 67 of the Act, I grant the landlord a monetary order for the sum of \$1300.00 in unpaid rent for May 2012.

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

I decline to make an order regarding the filing fees and 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: May 09, 2012.

Residential Tenancy Branch