



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and orders compelling the landlord to perform repairs and provide services. The landlord filed a cross application for an order of possession and a monetary order. Both parties participated in the conference call hearing.

Issues to be Decided

Should the notice to end tenancy be set aside?

Should the landlord be ordered to perform repairs and provide services?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The facts are not in dispute. The tenancy began in 2003 at which time the tenant paid an \$825.00 security deposit. The tenant is obligated to pay \$1,972.00 in rent in advance on the first day of each month. The tenant did not pay rent in the months of September and October. On September 6, the landlord served the tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice"). The tenant testified that he did not pay rent because the landlord had failed to perform repairs.

Analysis

I find that the tenant received the Notice on September 26. Although the tenant stated that he did not pay rent because the landlord had not performed repairs, section 26(1) of the Act requires tenants to pay rent when it is due regardless of the landlord's failure to comply with the Act. The tenant acknowledged that he did not pay rent for the month of September there is no legal basis on which the Notice may be set aside. Based on the above facts I find that the landlord is entitled to an order of possession. The tenant must be served with the 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.

As for the monetary order, as the tenant acknowledged that he has not paid rent in the months of September and October, I find that the landlord is entitled to recover the rent and I award him \$3,944.00. I further find that the landlord is entitled to recover the filing fee paid to bring this application and I award him \$50.00. I order the landlord to retain the \$825.00 security deposit and the \$29.21 in interest which has accrued to the date of this judgment and I grant the landlord a monetary order for the balance of \$3,139.79. I order the landlord to retain the \$825.00 security deposit and the \$29.21 in interest which has accrued to the date of this judgment and I grant the landlord a monetary order for the balance of \$3,139.79. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

As the tenancy is ending, it is unnecessary to address the tenant's claim for orders compelling the landlord to perform repairs and provide services. Those claims are dismissed. As the tenant has been wholly unsuccessful, he will bear the cost of his own filing fee.

At the hearing there was some discussion as to whether the landlord would reinstate the tenancy upon payment of rental arrears. I note that if the landlord chooses to reinstate the tenancy, it is open to the landlord to demand payment of the full arrears of \$3,944.00 as he is not required to accept the security deposit as rent.

Conclusion

The tenant's claim is dismissed in its entirety. The landlord is granted an order of possession and a monetary order for \$3,139.79.

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: October 11, 2012

Residential Tenancy Branch