



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MND, MNSD, FF / CNR, OLC, RP, LRE

Introduction

This hearing concerns 2 applications: i) by the landlord for an order of possession for unpaid rent / a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / retention of the security deposit / & recovery of the filing fee; ii) by the tenant for cancellation of a notice to end tenancy for unpaid rent / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / an order instructing the landlord to make repairs to the unit, site or property / & an order suspending or setting conditions on the landlord's right to enter the rental unit.

Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is no written tenancy agreement in evidence for this tenancy which began on May 1, 2011. Monthly rent of \$850.00 is due and payable in advance on the first day of each month, and a security deposit of \$400.00 was collected.

Arising from rent which remained unpaid when due on September 1, 2012, the landlord issued a 10 day notice to end tenancy for unpaid rent dated September 2, 2012. The notice was served in-person on the tenant on that same date. The tenant filed an application to dispute the notice on September 7, 2012. A copy of the notice was submitted in evidence. Subsequently, the tenant has made no further payment toward rent and she continues to reside in the unit.

For her part, the tenant expressed concern about a light that does not function, and the landlord indicated that he is aware of the light in question. The tenant also claims that there is a faulty tap in the unit, around which there is mould growing; the landlord denies

there is a mould problem. Finally, the tenant considers that the landlord has on occasion entered the unit without proper notice.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated September 2, 2012. While the tenant filed an application to dispute the notice, the tenant did not pay the full amount of overdue rent within 5 days of receiving the notice.

Section 26 of the Act addresses **Rules about payment and non-payment of rent**, and provides in part as follows:

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.

Following from all of the above, and in the absence of any right established by the tenant to deduct all or a portion of the rent, I find that the landlord has established entitlement to an order of possession.

As for the monetary order, I find that the landlord has established entitlement to a claim of \$1,750.00, which is comprised as follows:

\$850.00: unpaid rent for September
\$850.00: unpaid rent for October
\$50.00: filing fee

I order that the landlord retain the security deposit of \$400.00, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$1,350.00 (\$1,750.00 - \$400.00).

As to the tenant's concern about the non-functioning light, I hereby **ORDER** the landlord to FORTHWITH repair the light.

Concerning the tenant's claim that there is a faulty tap, around which mould is growing, in the absence of sufficient evidence to support this claim and in view of the order of possession granted in favour of the landlord, this aspect of the tenant's application is hereby dismissed.

Finally, the attention of the parties is drawn to section 29 of the Act which speaks to **Landlord's right to enter rental unit restricted**, and provides in part:

29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (f) an emergency exists and the entry is necessary to protect life or property.

I hereby **ORDER** the landlord to comply with the statutory provisions set out above in section 29 of the Act.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. 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.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,350.00**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

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