



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR and FF
Tenant: CNR and ERP

Introduction

This hearing addresses applications by both the landlord and the tenant.

The landlords' application of April 3, 2013 sought an Order of Possession in support of a 10-day Notice to End Tenancy for unpaid rent dated March 20, 2013 and received on March 23, 2013 according to the tenant. The landlord also sought a monetary award for the unpaid rent and recovery of the filing fee for this proceeding. In addition, I have exercised the discretion granted by section 64(3)(c) of the *Act* to permit the landlord to amend the application to request authorization to retain the tenant's security deposit in set off against the balance owed.

The tenant's application of application of March 26, 2013 sought to have the Notice to End Tenancy set aside and emergency repairs. Again, I have exercised the discretion granted by section 64(3)(c) of the *Act* permitted the tenant to add to his application a claim for damage or loss for the \$150 for replacement of food lost when the refrigerator failed.

As provided under Rule of Procedure 2.3, I find that the claim for emergency repairs and the lost food is unrelated to the paramount issue of the Notice to End Tenancy and I have severed those items from the tenant's application. The claim for repairs is now moot and the claim for lost food is dismissed with leave to reapply.

At the commencement of the hearing, the parties advised that the tenant had agreed to leave the tenancy on April 30, 2013 and the landlord continued his request for an Order of Possession to perfect that agreement.

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#RTB-136 (2011/07)



As a matter of note, as the landlord was away travelling, he was represented by his son.

Issue(s) to be Decided

This matter now requires a decision on whether the Notice to End Tenancy should be set aside or upheld and whether the landlord is entitled to a monetary award for the unpaid rent and filing fee, and authorization to retain the security deposit in set off.

Background and Evidence

This tenancy began on October 22, 2012. The landlord's son stated that rent was \$750 per month but conceded to the tenant's claim that it was \$700 per month as he had not submitted the rental agreement into evidence. The landlord holds a security deposit of \$350 paid on October 12, 2012.

During the hearing, the landlord's son gave evidence that the Notice to End Tenancy of March 20, 2013 had been served when the tenant had failed to pay the rent due on February 1, 2013 and on March 1, 2013.

He stated that, in the interim, the February and March rents remain outstanding and the tenant has paid no rent for April 2013. The tenant stated that the February rent had been paid, a claim firmly contested by the landlord.

The tenant stated that he had withheld rent in order to force the landlord to do repairs to the rental unit.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due whether or not the landlord is in compliance with the legislation or rental agreement.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenants did not pay the rent within five days of receiving the notice and did not make application to dispute it.

Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was April 2, 2013 based on the tenant's evidence that he received it on March 23, 2013.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect at 1 p.m. on April 30, 2013.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent for February, March and April 2013. I have found February rent is owed having considered the tenant's disagreement. The Notice to End Tenancy he received in on March 24, 2013 indicated two months' rent owed at that time. The tenant's application did not contest the amount, the tenant submitted no evidence to support his claim that it had been paid and I found the landlord's evidence more credible on the question.

As the landlord's application has succeeded on its merits, I find that he is entitled to recover the filing fee for this proceeding from the tenant.

As authorized under section 72 of the *Act*, I further find that the landlord is entitled to retain the tenant's security deposit in set off against the balance owed.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

Rent for February 2013	\$ 700.00
Rent for March 2013	700.00
Rent for April 2013	700.00
Filing fee	<u>50.00</u>
Sub total	\$2,150.00
Less retained security deposit (No interest due)	<u>- 350.00</u>
TOTAL	\$1, 800.00

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on April 30, 2013.

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is also accompanied by a Monetary Order for **\$1,800.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

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: April 24, 2013

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