



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, OPR, MNR, MNSD, MNDC, OLC, ERP, PSF, LRE, LAT, RR, RP, O, FF

Introduction

This hearing was convened in response to an application by the **landlord** and an application by the **tenant**, for Orders pursuant to the *Residential Tenancy Act* (the Act).

Both parties appeared in the conference call hearing and participated with their submissions and testimony. The tenant advised they are still residing in the rental unit.

It is my Decision that I will not deal with all the dispute issues that the **tenant** has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on the tenant's application are sufficiently related to the main issue to be dealt with together. Therefore, I will deal with the **tenant's** request to set aside, or cancel the landlord's Notice to End Tenancy for Unpaid Rent, and the associated **landlord's** application for an Order of Possession and Monetary Order related to unpaid rent, and the landlord's respective filing fee. On reflection, **I dismiss** the balance of the **tenant's** surviving claims, **with liberty to re-apply**.

As a result of all the above, the tenant sought to cancel a 10 Day Notice for Unpaid Rent (Notice to End). Despite their application to recover their filing fee, the record is that the tenant did not pay a filing fee.

The landlord sought an Order of Possession due to unpaid rent, a Monetary Order to recover rental arrears and inclusive of recovery of the filing fee associated with this application, and an order to retain the security deposit in partial satisfaction of the monetary claim.

Preliminary matters

The tenant requested an adjournment of all matters before this hearing as they have a "financing application" in the upcoming 2 days which may have a bearing on the

tenancy. The landlord opposed any delay. I determined that any matter outside the jurisdiction of this hearing is moot and irrelevant to this matter and that the hearing would proceed on the merits of the determinable matters before this hearing.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Should the Notice to End be cancelled?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The relevant evidence in this matter is as follows. The testimony of the landlord and the tenant is that the tenancy began on September 01, 2011. Rent in the amount of \$1350.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$675.00. The tenant testified they failed to pay the rent when due in the month of April 2013, and the landlord testified that on April 23, 2013 they personally served the tenant with a Notice to end tenancy for non-payment of rent of the same date. The tenant testified receiving the Notice to end and they explained they changed the date of the notice to April 24, 2013 - as submitted into evidence. The tenant argued the amount stated on the notice to end was more than they owed for rent, but acknowledged they had not paid utilities for the preceding month. The landlord testified they treated the unpaid utilities as unpaid rent after having notified the tenant in the month of March of the amount they owed for utilities, according to the tenancy agreement. The tenant testified they further failed to pay rent for the month of May 2013. The quantum of the landlord's monetary claim is for the **rent arrears** for the aforementioned 2 months in the amount of \$2700.00. The landlord did not provide evidence in respect to arrears of utilities; therefore a claim for utilities **is dismissed**, without leave to reapply. The landlord further seeks an **Order of Possession**.

The tenant does not dispute that the rent has not been paid and does not possess any proof of such, or an order from an Arbitrator allowing them to keep all of the rent, or that the tenant held back the rent, with prior notice to the landlord, for the cost of emergency repairs

Analysis

Based on the testimony of the landlord and the tenant and their supporting documents respecting the matters of rent, I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid.

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

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.

The tenant has not paid the outstanding rent and despite having applied for dispute resolution to dispute the notice to end the tenant has only confirmed that the rent has not been paid. Therefore the tenant's application to cancel the landlord's Notice to End for unpaid rent **is hereby dismissed** without leave to reapply. Based on the above facts I find that the landlord is entitled to an **Order of Possession**.

As for the Monetary Order, I find that the landlord has established a claim for \$2700.00 in unpaid rent. The landlord is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$2750**. The security deposit will be off-set from the award made herein.

Calculation for Monetary Order

Rental Arrears	\$2700.00
Filing Fees for the cost of this application	50.00
Less Security Deposit and applicable interest <i>to date</i>	-675.00
Total Monetary Award	\$2075.00

Conclusion

The tenant's application to cancel a Notice to End tenancy for unpaid rent **is dismissed**, with leave to reapply for any *surviving items* on application.

I grant an Order of Possession to the landlord **effective 2 days** from the day it is served on the tenant. The tenant must be served with this **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.

I Order that the landlord retain the deposit of \$675.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$2075.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 27, 2013