



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant also filed an application seeking an order to have the 10 Day Notice to end Tenancy for Unpaid Rent or Utilities set aside, a monetary order for compensation, an order to have the landlord comply with the Act, an order to make emergency repairs for health and safety reasons, an order to have repairs to the unit, site or property, an order to provide services or facilities required by law, an order to suspend or set conditions on the landlords right to enter the rental unit, and an order to authorize the tenant to change the locks to the rental unit. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is either party entitled to any of the above under the Act, the regulations or the tenancy agreement?

Background and Evidence

The landlord gave the following testimony:

The tenancy began on or about March 1, 2013. Rent in the amount of \$1400.00 is payable in advance on the first day of each month. The tenant failed to pay rent in the

month(s) of March and April and on April 8, 2013 the landlord served the tenant with a notice to end tenancy. The tenant further failed to pay rent in the month(s) of May 2013. The total amount of unpaid rent as of today's hearing is \$4200.00.

The tenant gave the following testimony:

The tenant agrees that she has only paid \$700.00 in total rent. The tenant stated that although the landlord is seeking to retain the \$700.00 deposit; the tenant advised she never posted a deposit and that the \$700.00 payment was towards the rent. The tenant stated that she felt justified in withholding the rent as the rental unit requires a substantial amount of repairs and that the unit was lacking simple safety measures such as locks on the doors and windows. The tenant stated that she's going to move out due to the ongoing repair issues and the inability to communicate with the landlord due to a language barrier. The tenant stated she needs time to find a place as she works long hours and hasn't had a chance to secure a place.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I accept the landlord's testimony and I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice. The tenant failed to dispute the notice but in her own testimony acknowledged and agreed with not paying the rent. 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, I find that the landlord has established a claim for \$4200.00 in unpaid rent. Regardless of whether the \$700.00 payment was classified as a deposit or rent the landlord still has received \$700.00. I apply that amount to the total amount of rent payable during this three month tenancy and find the amount of unpaid rent as of today's hearing is \$3500.00. The landlord is also entitled to recovery of the \$50.00 filing fee. I grant the landlord an order under section 67 for the balance due of \$3550.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The tenant did not provide any documentary evidence to support her claim. The landlord adamantly disputed the tenants' testimony. Based on the above I find that the tenant did not provide sufficient evidence to support her claim and I therefore dismiss her application in its entirety.

Conclusion

The landlord is granted an order of possession and a monetary order for \$3550.00.

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 08, 2013

Residential Tenancy Branch

