



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nacel Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, CNR, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on April 18, 2013 for:

1. An Order cancelling a Notice to End Tenancy – Section 46.

The Landlord applied on May 6, 2013 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67;
3. An Order to retain all or part of the security deposit – Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the Hearing, the Tenant requested an adjournment in order to obtain better evidence from the Landlord of rents paid over the course of the tenancy. The Tenant also wished to provide evidence in relation to a co-tenant’s portion of the rent that was unpaid. The Tenant further states that if the correct amount of arrears can be agreed to during the hearing or the adjournment the Tenant would pay those arrears to settle the dispute. The Landlord does not agree to an adjournment and does not wish to settle the dispute during the Hearing. As the Landlord’s evidence on the payments of

rent has been submitted, I find that there is no reason to adjourn the matter for additional evidence. As co-tenants are jointly and severally liable for the full amount of rent payable, evidence in relation the co-tenant's payment or non-payment of any portion of the rent is irrelevant. As the Landlord is not agreeable to settling the matter during the hearing or during an adjournment period, I decline the Tenant's request for an adjournment.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on March 15, 2011. Rent in the amount of \$1,150.00 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 \$575.00.

The Landlord states that as of April 9, 2013 the Tenant owed \$1,289.00 in unpaid rent and the Tenant does not dispute that on April 9, 2013 the Landlord personally served the Tenant with a 10 day notice for unpaid rent (the "Notice") for this amount. The Tenant states that the Landlord's accounting is confusing and inaccurate and that the Tenant only owes approximately \$1,041.00 in unpaid rent. The Landlord was unable to identify in their evidence of rents paid what amounts were in arrears for any particular month. The Landlord's accounting person could also not readily identify those amounts and agrees that these amounts are not set out in the evidence submitted. It is further noted that the Landlord's accounting evidence appears to identify an amount owed at the beginning of the tenancy. There was some discussion and confusion over the payment of a large amount of arrears in 2013. The Tenant states that this payment left no arrears. The Landlord states that this payment was received in February 2013 and

that arrears still remained. The Landlord states that the Tenant paid \$828.00 for May 2013 rent. The Landlord claims \$1,957.00

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. Although the Tenant disputed the Notice, the Tenant has not disputed that approximately \$1,000.00 is owed in rent. Given this evidence, I find that the Notice is valid in relation to an amount of unpaid rent and that the Landlord is therefore entitled to an Order of Possession. The Tenant's application is dismissed.

Noting that the Landlord's evidence is confusing, unclear and does not identify the arrears for each month since the onset of the tenancy, and based on the Tenant's evidence of approximate arrears, I find that the Landlord has substantiated arrears of **\$1,000.00**. As the Landlord's application has met with substantial success, I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,050.00**. Setting the security deposit of **\$575.00** plus zero interest off the entitlement leaves **\$475.00** owed by the Tenant to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord. 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** and interest of \$575.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$475.00**. If necessary, this order may be 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: May 16, 2013

Residential Tenancy Branch