



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0912390 B.C. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR OPR RR ERP OLC RP MNDC FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for unpaid rent;
- b) An Order of Possession pursuant to sections 46 and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- e) To cancel a Notice to End Tenancy for unpaid rent (amended by tenant);
- f) A monetary order or rent rebate as compensation for repairs to the property that were not completed or were completed by the tenant; and
- g) An order that the landlord do certain repairs.

SERVICE

Both parties attended the hearing. The landlord said he served the Notice to End Tenancy dated March 3, 2014 personally on the tenant with a witness (statement signed by her) and the tenant said he never got it; then he said later he got one by registered mail. The parties each agreed they received each other's Application for Dispute Resolution. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that rent is owed and they are entitled to an Order of Possession and a monetary order for rental arrears and to recover the filing fee for this application?

Or has the tenant demonstrated that the Notice to End Tenancy for unpaid rent should be set aside and that he is entitled to compensation for a broken lock, toilet backup/repair and maintenance work and to recover the filing fee?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced December 7, 2013, that rent is \$850 a month plus a proportion of the utilities and a security deposit was paid. The Residential Tenancy Agreement filed by the parties shows the security deposit was \$425 but the tenant contended he paid \$550 in December. First he said he paid \$550 for the security deposit and \$550 for pro-rated rent and this was written on the back of the lease and was not part of the documents provided for evidence. When invited to read exactly what was written, he said it was a scribbled signature with “\$550” written by it. The landlord said he did not recall any \$550 payment but was willing to give the tenant the benefit of the doubt on this point.

The parties agreed that no rent was paid for March and April 2014 (\$850x2). The landlord also claims \$7.00 bank charge for a returned cheque and \$30 owing from a tenant deduction from rent, allegedly to fix the lock which was never done. The tenant said \$30 was not sufficient and it is the landlord's responsibility in any case to fix the locks. The landlord provided a copy of the lease, receipt for January rent payment showing only \$820 (as \$30 was deducted by the tenant), a copy of the 10 day Notice to End Tenancy, a copy of the proof of service and a copy of a bank statement showing March rent being reversed from the landlord's bank account.

The tenant contended he had the rent money in an envelope to pay but wanted receipts and the landlord did not issue them. He also said the toilet was fine when he moved in but had been broken since February 14th approximately and he had telephoned the landlord repeatedly to fix it. When queried about a written note to the landlord, he said he did not know the address of the landlord; the landlord denied this and said the tenant offered to come to his home about payments at least once. The landlord's address is on the lease agreement. The landlord said he found out about the toilet when he went to the premises about the March rent and he engaged a plumber. The landlord provided an invoice from a professional plumber dated March 14, 2014 stating he plunged the toilet with the tenant present and it was plugged from misuse.

The tenant also claims a rent rebate or compensation of \$650 for 3 days trying to fix the toilet with an auger and work he did for the landlord. He has no written agreement with the landlord and the landlord denies he did any work for him. The tenant said he stored information on his digital phone but it is broken. He also said a few times that the lease in evidence was not his lease as some items were changed. However, he admitted that he wrote his name and mobile number on the first page of the lease and signed it.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

Order of Possession:

I find there is outstanding rent. Although the tenant made application to set aside the Notice to End Tenancy in time, I find he still has not paid his rent for March or April 2014. Section 26 of the Act provides that a tenant must pay the rent when due whether or not the landlord fulfills his obligations under the Act. Even if the landlord was not providing receipts as the tenant contended, I find this does not entitle him to withhold his rent. I find insufficient evidence that the Notice to End Tenancy should be set aside so I dismiss the Application of the tenant to set aside the Notice. Accordingly, I find the landlord entitled to an Order of Possession pursuant to sections 46 and 55 of the Act.

Monetary Order:

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord's evidence credible that rent for March and April 2014 has not been paid, that he incurred a bank charge of \$7 due to a returned cheque and that the tenant deducted \$30 from January rent for a lock repair which he never made. I find the landlord's oral evidence is well supported by the documents he filed and I find him entitled to recover \$1737 for unpaid rent and these charges as claimed. As the landlord agreed in the hearing that he would give the tenant the benefit of the doubt concerning a \$550 payment for the security deposit, rather than the \$425 set out in the lease, I will use the \$550 in the calculation of amount owing.

On the tenant's application, the onus is on him to prove on the balance of probabilities his claims. I found his evidence to be somewhat inconsistent as he first claimed that two payments of \$550 were noted on the back of the lease and when asked to read it, it was one notation of \$550 that was not designated as rent or security deposit. He also denied it was his lease but he had written his name and mobile number on the front and signed it. In respect to his claim for his work on the toilet, I find the landlord's evidence more credible that he found out about the toilet problem when he was attending the premises regarding unpaid rent for March, that he hired a professional plumber who found it had to be plunged and it was plugged by misuse; the landlord's evidence is well supported by the plumber's invoice. In any event, I find that problems such as plugged toilets if caused by the tenant are the tenant's responsibility to repair.

I find insufficient evidence to support the tenant's claim that he agreed to do work for the landlord or that he was to be compensated. The lease agreement clearly states that "premises is rented as is and there will be no improvements". If, as the tenant alleges,

there was an agreement that he was to do improvements, I find it more likely that it would have been noted along with this handwritten clause on the face of the lease. I find he did deduct \$30 from January rent allegedly for a lock repair which was not done and which he now says is the responsibility of the landlord. I find it is the landlord's responsibility to repair locks and provide keys in rented premises according to the Residential Tenancy Policy Guidelines but if the tenant states he will do a lock repair and deducts some money from rent, I find the landlord is entitled to believe the tenant treated this as an emergency repair and deducted sufficient rent for the expense pursuant to section 33 of the Act. Although the tenant alleges \$30 was not sufficient, he did deduct this amount from January rent and he never did the repair so I find the landlord entitled to recover this amount. In summary, I find insufficient evidence to support the tenant's claim for a rebate of rent or other compensation.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply and I find he is not entitled to recover filing fees for his application.

I find the landlord entitled to an Order of Possession and a Monetary Order as calculated below. I find him entitled to retain the (increased as agreed) security deposit to offset the amount owing and to recover filing fees for his application.

Calculation of Monetary Award:

Rent for March and April 2014	1700.00
Bank fee for returned cheque	7.00
Reimbursement of deduction from Jan. rent	30.00
Filing fee for the application	50.00
Less (increased) security deposit	-550.00
Total Monetary Order to Landlord	1237.00

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: April 09, 2014

Residential Tenancy Branch