



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the tenant **and** an application by the Landlord, each seeking Orders under the *Residential Tenancy Act* (the Act).

Both parties appeared in the conference call hearing and participated with their submissions and testimony. The parties acknowledged exchange of the tenant's evidence. The landlord provided proof the tenant received their evidence, although the tenant denied doing so. The hearing proceeded on the parties' testimony.

The tenant sought to cancel a 10 Day Notice for Unpaid Rent. The tenant advised they are still residing in the rental unit but are in midst of vacating.

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. It must be noted that the landlord orally amended their application respecting their application for a Monetary Order solely seeking unpaid rent for 5 months.

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 testimony of the landlord and the tenant is that the tenancy began on December 01, 2012 as a written tenancy agreement. The parties agreed rent in the amount of \$3000.00 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 \$1500.00 still held in trust. The tenant failed to pay rent for 5 months when due and the landlord served the tenant with a previous notice to end tenancy for non-payment of rent. More recently the tenant failed to pay the rent for March 2014 and on March 02, 2014 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant further failed to pay rent in the month of April 2014. The quantum of the landlord's monetary claim is for the rent arrears for the aforementioned 5 months in the amount of \$15,000.00. The landlord's testimony is that they are waiving an additional \$4088.00 originally sought. The landlord further seeks an immediate Order of Possession.

The tenant testified they agreed with the landlord and they do not dispute that the rent has not been paid for 5 months during the tenancy to date and have not provided evidence they possess proof or an Order from an Arbitrator allowing them to keep any of the rent owed, or that the tenant held back the rent, with prior notice to the landlord, for their costs of emergency repairs. The tenant testified that they withheld rent because of issues of the rental unit during the tenancy, and were relying on this hearing to devalue the tenancy agreement and contractual obligation of rent. However, it was discussed during the hearing this is not what the tenant's application sought to achieve.

Analysis

Section 26 of the Act, in relevant 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.

Based on the undisputed testimony of the landlord and the tenant 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. 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 arrears have not been paid and they do not have evidence upon which to dispute the landlord's claim of unpaid rent. Therefore, the tenant's application **is hereby dismissed**, without leave to reapply.

The tenant was advised it is available to them to file separately for Dispute Resolution if they possess evidence supporting a claim for compensation.

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 **\$15,000.00** in unpaid rent. The landlord is also entitled to recovery of the \$100 filing fee, for a total entitlement of **\$15,100.00**. The security deposit held by the landlord will be offset from the award.

Conclusion

The tenant's application is **dismissed**, without leave to reapply.

I grant an Order of Possession to the landlord **effective 2 days** from the day it is served upon 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 security deposit of \$1500.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance

due of **\$13,600.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

The balance of the landlord's application is **dismissed**, without leave to reapply.

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: April 30, 2014

Residential Tenancy Branch

