



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dorset Realty Group
and [tenant name suppressed to protect privacy]

DECISION

Codes: CNR, MNSD, OPR, MNR, MNSD, MNDC, FF

Introduction:

This was an application by the tenant to cancel a Notice to End the Tenancy dated February 2, 2015 with an effective date of February 12, 2015, and a monetary Order for the loss of use of his kitchen occasioned by a fire, amounting to \$ 1,250.00. The landlord by way of cross application sought an Order for Possession and Monetary Order based upon the same Notice.

Preliminary Matter:

In the course of this proceeding and upon review of the tenant's application, I have determined that I will not deal with all the dispute issues the tenant has placed on his application. For disputes to be combined on an application they must be related. Not all the claims on this 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 nonpayment of rent and I dismiss the balance of the tenant's claim for a monetary Order with liberty to re-apply.

Issues:

Is the tenant entitled to a cancellation of the Notice?

Is the landlord entitled to an Order for Possession and a Monetary Order for unpaid rent?

Background and Evidence:

A hearing was conducted in the presence of both parties. The landlord's agent JH testified that the Notice to End the Tenancy was posted on the tenant's door on December 2, 2015. I find that the Notice to End a Residential Tenancy was served on the Tenant on February 5, 2015. The tenant admitted service of the

landlord's application. The tenant testified that he called the landlord's agent on or about February 6th and advised them that he taped his application on his own door and asked the landlord to retrieve it. The tenant testified that the landlord's agent advised him he received the tenant's application. JH admitted receiving the tenant's application on or about February 10, 2015. Pursuant to section 71(2)(b) of the Act I find that the landlord has been sufficiently served with the tenant's application.

The landlord testified that the tenant did not pay any rent for February or March 2105. The landlord testified that the tenancy began on December 1, 2015 with rent in the amount of \$ 1,015.00. The landlord testified that the tenant paid a security deposit amounting to \$ 500.00 on November 27, 2013. The landlord asked for an Order for Possession and a recovery of rent for February and loss of revenue for March 2015.

The tenant admitted not paying the rent because his kitchen was not useable as a result of a fire occurring on or about December 23, 2014. In fact the tenant alleged that his entire unit was not liveable.

Analysis:

The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent. Here the tenant admitted not paying rent for February but had not obtained an Order for the RTB permitting him to do so. He had not made any application to compel the landlord to make any repairs nor for permission to deduct a portion of or withhold his rent. Therefore the tenant did not have a lawful reason for withholding his rent. Accordingly I must dismiss his application to cancel the Notice to End the Tenancy.

Section 55(1)(a) provides that the arbitrator must grant an order of possession of the rental unit if the landlord makes an oral request for an order of possession at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 46 and has upheld the Notice. The landlord made such a request at the hearing. I order pursuant to section 44 of the Act that the tenancy shall end on February 12, 2015 the date set out in the Notice.

I find that the landlord has established a claim for unpaid rent totalling \$1,015.00 for the month of February, 2015. I have dismissed with leave to reapply the landlord's claim for any further loss of revenue as premature. The landlord is entitled to recover the \$50.00 filing fee for this application for a total claim of \$1,065.00.

Conclusion:

I have dismissed the tenant's claim to cancel the Notice to End the Tenancy. I have dismissed with leave to reapply the tenant's claims for monetary compensation. The tenant will not recover any filing fee paid. I granted the landlord an Order for Possession effective two days after service upon the tenant. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement. I order that the landlord retain the deposit and interest of \$ 500.00 and I grant the landlord an order under section 67 for the balance due of \$ 565.00. This order may be filed in the Small Claims Court and enforced as an order of that Court. This Decision and all Orders must be served on the tenant as soon as possible.

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: March 02, 2015

Residential Tenancy Branch

