



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord: MNR, OPR, OPC, FF
Tenant: CNR, CNC, MNDC, FF

Introduction

This hearing was convened in response to cross-applications by the parties.

The tenant filed their application April 23, 2015 pursuant to the *Residential Tenancy Act* (the Act) for Orders, *orally amended in the hearing*, as follows:

1. A Monetary Order: compensation for loss – Section 67
2. An Order to recover the filing fee for this application (\$50) - Section 72

The landlord filed their application May 04, 2015 pursuant to the *Residential Tenancy Act* (the Act), for Orders, *orally amended in the hearing*, as follows:

1. An Order of Possession for unpaid rent – Section 55
2. A Monetary Order for unpaid rent - Section 67
3. An Order to recover the filing fee for this application (\$50) - Section 72

Both parties attended the hearing and were given opportunity to present all *relevant* evidence and relevant testimony in respect to their orally amended claims and to make *relevant* prior submission of evidence to the hearing and fully participate in the conference call hearing. Both parties submitted and exchanged document evidence. Each party was given opportunity to clarify their claims on application. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present.

The tenant testified that they were compelled to vacate the rental unit and are solely seeking the return of a portion of the rent paid the landlord.

The landlord seeks an Order of Possession and a Monetary Order for unpaid rent.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?
Is the landlord entitled to the monetary amounts claimed?
Is the tenant entitled to the monetary amounts claimed?

Each party bears the burden of proving their respective claims.

Background and Evidence

The *undisputed* evidence in this matter is as follows. The tenancy began April 20, 2015 as a written tenancy agreement - submitted into evidence. The tenant vacated May 04, 2015 as the rental unit was without electrical power - having been shut off by the landlord on April 21, 2015. The payable monthly rent is \$1000.00 due in advance on the 1st day of each month. The agreement states the tenant was required to pay a security deposit by May 08, 2015. Both parties agreed the tenant paid the landlord rent of \$1000.00 on April 20, 2015 for which the tenant obtained a receipt signed by the landlord stating the money was, "Rent for May" + "do repairs for April tenancy" – which both parties explained was in respect to an agreement the tenant would make certain repairs to the unit in exchange for April tenancy. On the second day of the tenancy, April 21, 2015, the landlord went to the tenant with concerns about the tenant smoking vis a vis landlord's health issues and requested the tenant vacate. On the same day the landlord turned off the electrical power to the rental unit because of concerns about an existing electrical deficiency with the baseboard heating in the unit. The electrical power remained shut off at least until May 04, 2015, when the tenant moved out of the rental unit.

The disputed evidence is as follows. The landlord claimed that on the April 21, 2015 visit to the tenant they gave them back the \$1000.00 paid the previous day and told them to vacate. The landlord claims they returned the rent in an envelope consisting of \$100.00 bills, and that it was witnessed by 2 male members of the landlord's family - the male landlord in this matter and AW2. However, the landlord claims that the 2 witnesses may not have seen handing the envelope to the tenant as they were, "looking down". The tenant claims they saw the landlord holding an envelope but that the landlord did not give it to them. The landlord provided an unsigned document purporting to be a receipt for the return of the cash. It must be noted that the absence of either of the 2 witnesses in this hearing or any evidence from them was highlighted to the landlord.

On the third day of the tenancy, April 22, 2015, the landlord gave the tenant a 10 Day Notice to End Tenancy for Unpaid Rent stating that the tenant had failed to pay rent in the amount of \$1000.00 due on the same date. The landlord claims that the 10 Day

Notice was in response to the rent not having been paid – “as it was returned to the tenant”. The tenant claims the rent *was paid* and never returned, and thus the basis of their application disputing the landlord’s 10 Day Notice to End.

The tenant testified they “begged” the landlord to restore the power to no avail. The tenant testified they have 4 children - including a newborn - for whom they could not remain in the rental unit without electrical power - especially as the family is under guidance of Family and Child Services. Therefore they moved their family from the unit on May 04, 2015 leaving their belongings behind and retained the key. The landlord had provided a letter to the tenant dated May 04, 2015 stating they would turn on the electrical power on the tenant obtaining a letter from the ‘fire inspector’ *“that all of the baseboard heaters in the home are wire are connected properly and will not cause a fire in the home”* – as written. The tenant asserted that they will not be returning to the rental unit - having found alternate accommodations - and will remove all of their belongings inside the unit and return the key as soon as they possibly can upon obtaining funds to afford the move. The tenant testified they were not contesting possession of the rental unit.

On April 22 the landlord also gave the tenant 1 Month Notices to End Tenancy for Cause, and again on April 27, 2015. The landlord’s Notices did not stipulate a reason on page 2 of the Notices. In testimony the landlord stated they, *“did not know why (they) gave the Notices to the tenant, and I wish I hadn’t”*.

Analysis

All references to the relevant legislation or policy guidelines can be accessed from the Residential Tenancy Branch website at www.gov.bc.ca/landlordtenant.

It must be noted that each party is responsible to support their claims. I have reviewed and considered all of the *relevant* evidence in this matter. On preponderance of all the evidence submitted, and on balance of probabilities, I find as follows.

Landlord’s claim

It must be noted the tenancy agreement states the rent is to be paid *monthly* and that the first day of the rental period falls on the 1st day of each month – that is: the rent is not due until the 1st of each month. I find the evidence is that rent of \$1000.00 was due on May 01, 2015, and that any tenancy in April 2015 was to be satisfied by certain repairs by the tenant. I further find the evidence is undisputed by the parties that the landlord received \$1000.00 from the tenant on April 20, 2015 - for May 2015 rent. The landlord claims they returned the \$1000.00 to the tenant in the presence of 2 witnesses,

which the tenant denies receiving from the landlord, and the following day gave the tenant Notice to End Tenancy for not paying the \$1000.00 in rent. Concurrently the landlord gave tenants Notice to End Tenancy for Cause without reason – although stating wishing they hadn't. As this is the landlord's claim to support, it was brought to the landlord's attention that neither of their witnesses was presented at the hearing to support the landlord's claim they returned the rent. I find it was further available to the landlord to provide evidence by other means from either of the 2 witnesses in support of their claim, but they did not. I also find the landlord's actions and testimony of events respecting the \$1000.00: accepting it, it's claimed return of it, the 10 Day Notice claiming non- payment of it after claiming its return – to be not credible. I additionally find the landlord's responses of not knowing why they issued Notice to End for Cause, without reason and doing so with regret, additionally perplexing. As a result of all the above I find the landlord's testimony unreliable and lacking credibility. I find it clear the landlord received \$1000.00, but on the face of contrasting testimony from the tenant has not proven, on balance of probabilities, their claim they returned it. On balance of probabilities I find that the landlord still holds rent of \$1000.00. Therefore I **dismiss** the landlord's claim for unpaid rent.

As payment of rent was not (yet) due on the date of April 22, 2015, as per the tenancy agreement and as claimed on the landlord's 10 Day Notice to End, I find that the landlord's 10 Day Notice was, at best premature, and *not valid*. Despite having found the landlord holds rent for May 2015 it is clear from the evidence that the tenant will not be returning to the rental unit and does not contest possession of the rental unit, therefore it is not prejudicial to either party that I grant the landlord their request for an **Order of vacant Possession** of the rental unit effective the end of May 2015. The Order of Possession will take effect May 31, 2015.

The tenant testified they will remove their belongings as soon as possible and return the key, including the landlord's 'cable box'.

Tenant's claim

Section 32(1) and (5) of the Act effectively states that the landlord is responsible for ensuring that a rental unit is suitable for occupation by a tenant and complies with the health, safety and housing standards required by law. The evidence is that the landlord was aware of an electrical deficiency in the heating system which likely prevented the safe occupation of the unit from the day it was rented and that simply turning off the electrical power to the entire rental unit was not a legal remedy, and in the absence of electrical power for the rental unit the tenant family could not remain. Under the circumstances I find the tenant is entitled to an abatement of rent paid. I find the tenant was not required to pay rent from April 20 to April 30, 2015. However, as the tenant

paid rent for May 2015, I find the tenant is entitled to rent abatement representing the period they physically occupied the rental unit in May 2015, in the *set amount* of **\$150.00**.

As both parties were partially successful in their claims they are respectively entitled to recover their filing fee: which cancel out.

Conclusion

The parties' respective applications, in part, have been granted and the balances of their claims are **dismissed**, without leave to reapply.

I grant an Order of Possession to the landlord effective May 31, 2015. 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 grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$150.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

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: May 21, 2015

Residential Tenancy Branch

