



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord: MNR, OPR, MNSD, MNDC, FF
Tenant: CNR, MNDC, RR

Introduction

This hearing was convened in response to cross-applications by the parties. The **tenant** filed their application August 05, 2016 pursuant to the *Residential Tenancy Act* (the Act), subsequently amended, for Orders as follows:

1. Cancel the landlord's Notice to End for Unpaid rent – Section 46
2. Allow tenant to reduce rent for services or facilities agreed upon but not provided / internet service – Section 65
3. A Monetary Order: compensation for loss / harassment – Section 67

The **landlord** filed their application August 11, 2016 pursuant to the *Residential Tenancy Act* (the Act), for Orders as follows:

1. An Order of Possession for unpaid rent – Section 55
2. A Monetary Order for unpaid rent - Section 67
3. To retain the security deposit as set off – Section 38
4. An Order to recover the filing fee for this application - Section 72

Both parties attended the hearing and were given opportunity to present all *relevant* evidence and relevant testimony in respect to their claims and to make *relevant* prior submission of evidence to the hearing and fully participate in the conference call hearing. Both parties acknowledged exchanging their respective applications. The tenant acknowledged receiving the landlord's document evidence and not submitting 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.

Issue(s) to be Decided

Is the 10 Day Notice to End tenancy for unpaid rent effective to end this tenancy?

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

Should the tenant be allowed to reduce rent for a service or facility agreed upon but not provided?

Background and Evidence

The *undisputed* evidence in this matter is as follows.

The tenancy began July 15, 2014 as a written tenancy agreement of which a copy is submitted into evidence. The payable monthly rent as of August 01, 2016 is \$668.00 due in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$325.00 which they retain in trust. On August 02, 2016 the landlord gave the tenant a 10 Day Notice to End for Unpaid Rent stating the tenant owed rent in the aggregate amount of \$1983.00 consisting of August 2016 rent of \$668.00 and arrears of rent for March and April 2016 in their remaining balance of \$1315.00. The parties agree the tenant left the country in early December, 2015 and returned at the end of April 2016. The tenant acknowledged not paying the rent for August 2016 and having further failed to pay rent for the current month of September 2016.

In dispute is as follows.

The landlord claims the tenant told them in December they would return in February 2016. On December 01, 2015 the tenant provided the landlord \$1730.00 which they allocated to rent for December 2015 (\$650.00), January 2016 (\$650.00) and the remainder to February 2016 (\$430.00). The landlord provided that in the months following the tenant's return from overseas in April 2016 the tenant paid additional rent of \$205.00 which the landlord credited to the tenant's arrears for February, March and April 2016. The landlord provided copies of receipts for paid rent from the outset of the tenancy in 2014 toward supporting their version of events, including receipts for December 2015 to February 2016.

The tenant claims they informed the landlord in December 2015 they would return 5 months later in April 2016 and provided the landlord with \$3250.00 for the rent for 5 months. The tenant claims the landlord did not provide them a receipt. The tenant did not submit or further testify as to other evidence toward supporting their version of events.

The tenant claims that from the outset of the tenancy the landlord has allowed them to use the landlord's unsecured (*password-unprotected*) internet signal and the landlord recently *password-protected* their internet service and is therefore no longer available to the tenant. The parties agree that the provision of internet service is not stipulated in the tenancy agreement as a utility included in the rent. The tenant argues the service was provided to them and is now being withheld without notice, therefore requests that a reduction in the rent is warranted. The landlord argues they did not withdraw something that was not provided as part of the rent, but that they now have secured their internet signal.

The tenant further claims that the current dispute with the landlord in respect to the issues in this hearing have been stressful, resulting in depression and a need to change their college. The tenant seeks compensation for harassment in the amount of \$7000.00. Both parties testified the tenancy relationship has been stressed.

Analysis

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

In relevant part, **Section 26** of the Act, 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.*

When a landlord alleges a tenant has not paid rent, the tenant bears the burden of proving the rent has been paid, or the attempts made to satisfy the rent, or that they withheld the rent for their cost toward emergency repairs, or have an Arbitrator's Order authorizing they retain the rent. I accept the tenant's acknowledged they have not paid the rent for August and September 2016. The parties provided contrasting evidence respecting the purported arrears in rent. I find the tenant has not provided sufficient evidence to support their version of events respecting a claimed advance payment to the landlord of \$3250.00, in December 2015. If paid in cash it would be reasonable to expect the tenant to have insisted and thereby provided a receipt and / or witness of the transaction. If paid by a secured instrument, such as a bank draft or a money order, it would be reasonable to expect the tenant to have provided the respective proof for those transactions. If paid electronically, it would be reasonable to expect the tenant to have provided a record of the payment, or withdrawal from an account. If paid by personal cheque it would be reasonable to expect the tenant to have provided the cancelled cheque into evidence. I find it noteworthy that in light of the significant amount in question the tenant has not provided any other evidence in support of their testimony that they prepaid 5 months of rent. I find the landlord's version of events and respective evidence more plausible and their testimony and supporting evidence makes more sense than the tenant's version of events. Therefore, *I prefer* the evidence of the landlord in respect to the arrears of rent for February to April 2016.

As a result of the above I find the evidence supports that a significant amount of rent has not been paid. I find the tenant has not proven the rent has been paid or they were entitled to withhold rent. As a result, I find the 10 Day Notice to End tenancy for unpaid rent is effective to

end this tenancy. I therefore **dismiss** the tenants' application to set aside the Notice dated August 03, 2016 and under the provisions set out by Section 55(1) of the Act I must issue an Order of Possession to the landlord. Accordingly, the landlord is given an Order of Possession.

I also find that the landlord has established a monetary claim for the unpaid rent. The landlord is also entitled to recovery of their filing fee.

Tenant's claim

I accept the tenant's testimony that their dispute with the landlord in respect to the issues in this matter has been stressful. However, I find that the test for a claim of *harassment*, and especially harassment justifying compensation, is a high one. I find the tenant has not advanced sufficient evidence proving the landlord harassed them, nor that the actions or conduct of the landlord in the course of this dispute constitute a basis for compensation. As a result, I **dismiss** this portion of the tenant's claim.

In respect to the tenant's claim the landlord has stopped providing a service or facility agreed upon and no longer provided, I find that according to the tenancy agreement the landlord's internet utility is not identified as included in the tenant's rent. I find no evidence has been presented the parties established an agreement either verbal or written respecting the landlord's internet service. I find the landlord's failure to password-protect their internet signal made it available to everyone within proximity and clearly was utilized by the tenant for a period of time, until the landlord chose to protect the signal from being used by anyone without a password. Effectively, I find that the tenant was a recipient of the landlord's internet signal for the period they used it, however the landlord then determined not to allow access to their internet service by everyone. I disagree with the tenant that it was a service or facility the parties agreed to, which has now been denied to the tenant. As a result, I **dismiss** the portion of the tenant's claim seeking a reduction or abatement of rent in compensation, with the further result that the tenant's application is **dismissed** in its entirety.

Orders

I grant an Order of Possession to the landlord **effective 2 days from the day it is served on 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.

Calculation for Monetary Order

The security deposit will be off-set from the award made herein.

Unpaid rent – February, March, April 2016	\$1315.00
Unpaid rent – August 2016	\$668.00
Unpaid rent – September 2016	\$668.00
Filing Fee - landlord	\$100.00

<i>Less Security Deposit held in trust</i>	<i>-\$325.00</i>
Monetary Award to landlord	\$2426.00

I Order that the landlord retain the security deposit of \$325.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$2426.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's application is dismissed. The landlord's application, in relevant part, has been granted.

This Decision is final and binding on both parties.

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

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: October 03, 2016

Residential Tenancy Branch

