

## **DECISION**

Dispute Codes      Tenant    CNR, LRE, OLC, PSF  
                                 Landlord   OPR, MNR, MNDS, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notice to End Tenancy, to set restrictions on the Landlord's right of entry, for the Landlord to comply with the Act, regulations and tenancy agreement and to provide services and facilities required by the tenancy agreement and the law.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on April 5, 2017 in accordance with section 89 of the Act. The Landlord said the registered mail package was returned to sender as unclaimed. The Tenant said she did not pick up her registered mail.

The Tenant said she did not serve the Landlord her application and Notice of Hearing (the hearing documents) as she did not know that she had to do that. Consequently the Arbitrator told the Tenant that because she did not serve the Landlord with her hearing documents as required by section 89 of the Act, her application is dismissed without leave to reapply. The Tenant protested the Arbitrator's decision and said it was not fair because she did not know she had to give the papers to the Landlord. The Landlord said he did not receive any documents from the Tenant. The Tenant's application is dismissed without leave to reapply.

The Tenant was upset with the decision and verbally abused the Arbitrator and Landlord and then left the conference call. Towards the end of the hearing the Tenant dialled back into the conference call and again verbally abused the Arbitrator and Landlord. The Tenant said that she did owe the Landlord approximately \$2,000.00 in unpaid rent, but she did not owe the Landlord approximately \$8,000.00 that the Landlord is claiming.

### Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to retain the Tenant's security deposit?

### Background and Evidence

This tenancy started on October 1, 2009 as a month to month tenancy. Rent is \$1,000.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$500.00 on September 6, 2009.

The Tenant left the conference call approximately 10 minutes into the hearing after her application was dismissed due to lack of service on her application and hearing package to the Landlord. It was explained to the Tenant that the instructions she received with documents from the Residential Tenancy Branch required her to serve the Landlord a copy of her application, any evidence and the Notice of Hearing.

After the Tenant left the hearing the Landlord said he served the Tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 23, 2017 by posting it on the door of the Tenant's rental unit. The Landlord provided a Proof of Service document with a witness signature supporting the service of the Notice to End Tenancy. The amount of unpaid rent on the 10 Day Notice to End Tenancy for Unpaid Rent is \$6,330.00. The Landlord continued to say that the Tenant has not paid April, 2017 rent of \$1,000.00 and May, 2017 rent of \$1,000.00 as well. The Landlord said his monetary claim is a total of \$8,330.00 plus the Landlord is requesting to recover the filing fee of \$100.00 and to retain the Tenant's security deposit of \$500.00 as partial payment of the unpaid rent.

The Tenant dialled back into the hearing at approximately the 15 minute mark. The Tenant said the hearing was not fair and the Tenant verbally abused the Arbitrator and the Landlord. The Tenant said she had always paid the rent by cash and the Landlord had not given her any rent receipts. The Tenant said she did not owe the Landlord \$8,000.00 but she did have approximately \$2,000.00 in unpaid rent. The Tenant said she was trying to catch up on the rent. The Tenant did not provide any evidence to support her application.

The Landlord said he wants to end the tenancy as soon as possible.

Analysis

Section 26 (1) of the Act says 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

I find that the Tenant has not paid the overdue rent and the Tenant does not have the right to withhold a part or all of the unpaid rent. The Tenant's application to dispute the Notice to End Tenancy has been dismissed as a result of not serving the Landlord the application and hearing documents. Consequently, I find for the Landlord and award the Landlord an Order of Possession and a Monetary Order for unpaid rent.

I find pursuant to s. 55 of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of the Order on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent for the months of September, 2016 through to March, 2017 in the amount of \$6,330.00 and for the months of April and May, 2017 in the amount of \$2,000.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$100.00 filing fee for this proceeding. Pursuant to sections 67 and 38 of the Act, I order the Landlord to retain the Tenant's security deposit of \$500.00 and the Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$8,330.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$8,430.00
Less	Security Deposit		\$ 500.00
	Balance Owing		\$7,930.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$7,930.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenant's application is dismissed without leave to reapply.

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 8, 2017.

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Residential Tenancy Branch