



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR OPR ERP AS LRE LAT MNDC PSF RP RR

Introduction:

Both parties made Applications and both attended the hearing and gave sworn testimony. The landlord said they served the tenant personally with a 10 Day Notice to End the Tenancy for non-payment of rent dated June 6, 2017 to be effective June 16 and the tenant acknowledged receipt of it and the landlord's Application by registered mail. The landlord acknowledged service of the tenants' Application dated June 8, 2017. The landlord applies pursuant to *The Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order of Possession;
- b) A Monetary Order for unpaid rent; and
- c) To recover filing fees paid for this application.

The tenant applies:

- d) To cancel the Notice to End Tenancy.
- e) To obtain a rent rebate for emergency repairs they paid for and for orders to have emergency repairs done and for permission to change the locks;
- f) To obtain permission to sublet;
- g) To obtain rent rebates for facilities not provided pursuant to section 27 and for lack of repair;
- h) To recover filing fees for this Application.

Preliminary Issue:

1. The tenant is claiming compensation of \$35,000 which is the monetary limit of the jurisdiction of the Act. The primary issue in this hearing is whether or not the 10 Day Notice to End Tenancy should be cancelled and the tenant has made a multitude of claims which may or may not be relevant or related to this main issue. According to Residential Tenancy Rules of Procedure 11.2, the Dispute

Resolution Officer may decline to hear or accept the evidence if the officer decides the evidence is not relevant.

2. The landlord requests the address of the tenant be amended to show the home as a trailer, not a mobile, and to correct the municipality. The amendment was granted.

Issues:

Has the landlord proved on a balance of probabilities that rent is owed and they are entitled to an Order of Possession and a Monetary Order for rental arrears and recovery of the filing fee?

Or is the tenant entitled to any relief? Has the tenant proved on a balance of probabilities they are entitled to compensation as claimed.

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The tenancy began August 1, 2014, rent is \$650 and no security deposit was paid. The tenant said the condition of the trailer or motor home or mobile (as variously described) was obviously poor so he negotiated with the landlord that no security deposit would be paid. The landlord said he gave the tenant a further one month free rent and allowed some deductions such as deductions to buy electric heaters when he discovered the furnace was broken. The landlord claims no rent was paid since March 2017 (6x \$350) so the tenant owes \$3900 including loss of revenue of \$650 for August 2017. The landlord concedes a deduction of \$470 for an emergency pump repair and \$21 for loss of water for a day. The landlord also agrees to the deduction of \$99 for one fill-up of the water tank although he denies the accusations of the tenant that he emptied the tank. In total, the landlord agrees to \$590 in deductions from the unpaid rent.

The tenant stated he paid \$1409 for April and May rent plus \$109 in rent arrears on April 7, 2017 when the landlord came to collect it. The landlord denies receiving that. The parties had few written documents, said there was no written tenancy agreement, some but not all receipts were provided for rent paid in cash and no tenant ledger was provided in evidence. The landlord said he hired the agent on June 5, 2017. The agent confirmed the landlord provided them with the details of outstanding rent of \$650 a month since March 2017 and confirmed the tenant has paid no rent since to them.

The tenant provided many statements and a list of possible monetary claims for \$122,641.74. They said they waived any amount over \$35,000 which is the limit of our jurisdiction under the Act. The tenant listed their claims as follows:

1. \$1081.40 for emergency repairs and wood to build mobile barns. The landlord said he conceded the amount for the emergency repair as invoiced for \$470 but he had not requested or given permission to build mobile barns.
2. \$63,000 for labour hours (5 hrs a day for 42 months). There was no contract for labour and the landlord denied hiring the tenants to do work.
3. \$29,250.00 rent rebate for 45 months (x\$650) for having to live in an illegal structure with mould, a broken furnace and no insulation. The landlord said someone else rented the unit before this tenant with no complaints. He agreed it was in rough shape but the tenants viewed it and agreed they wanted to move in and agreed to one month free rent as compensation to take the trailer as it was. The landlord said he also gave some deductions at the time to buy electric heaters which the tenants did and used.
4. \$8612.34 refund of hydro for trailer because the unit was not legal.
5. \$39.31 for one month of hydro for the house after the landlord ceased paying for it. The landlord agrees the tenant should be reimbursed for that.
6. \$500 for a flat deck trailer to move because the landlord should be responsible for their moving costs as he is forcing them to move.
7. \$20,000 loan from father to get a live-in trailer because the landlord is forcing them to move when they had the rent money and he refused it.

The tenant said they have a business and a lot of animals that are difficult to move. After some discussion, the landlord agreed to an effective date for the Order of Possession of August 15, 2017.

Analysis:

The Notice to End a Residential Tenancy is based on non-payment of rent. 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. Although the tenant disputed the Notice in time, I find they still had a significant amount of unpaid rent after deducting the emergency repairs claimed against the landlord. I find none of their complaints constitute valid reasons to withhold the rent. I find the landlord's evidence more credible that they did not pay rent since May 2017. Although they claimed they offered him some rent, I find insufficient evidence to support their statements. They supplied no bank statements or other source information to show from where they obtained the cash to pay the landlord. The fact that the professional agent took over on

June 5, 2017 and confirmed no rent money was offered to them supports the landlord's credibility. I therefore dismiss the tenants' 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 at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 46 and has upheld the Notice. I grant the landlord an Order for Possession effective August 15, 2017.

As the tenants are vacating on August 15, 2017, I decline to consider their multitude of requests for emergency and other repairs, to change locks, to have permission to sublet or for further rent rebates. I find these and other requests irrelevant to the main issues which are whether or not the Notice to End Tenancy should be cancelled, how much rent is owed and how many deductions should be allowed for emergency repairs and other items. Other than their claims considered below, I dismiss the balance of their claims without leave to reapply.

I find rent is owed in the amount of \$650 for 5 months (total \$3250) plus \$325 for 15 days of over holding rent in August 2017. I decline to grant the landlord further revenue loss as they have sold the property and will not be re-renting. From the \$3575 owed for rent arrears will be deducted the amounts agreed by the landlord, that is \$470 for emergency water pump repair, \$21 for water loss for one day, \$99 for filling the water tank one time and \$39.31 for hydro for the house which was paid by the tenant (total deductions agreed \$629.31).

In respect to the further compensation claimed by the tenant listed above, I find the landlord had not requested wood to build mobile barns but he conceded the invoiced amount for \$470 for emergency pump repair as detailed above. I find I have no jurisdiction over contracts for labour so decline to further consider the tenant's claim for \$63,000 for labour hours (5 hrs a day for 42 months).

In respect to a refund of all their rent, that is \$29,250.00, I find the weight of the evidence is that the tenant viewed the trailer before moving in and agreed to take it as is. I find their evidence is that they freely negotiated this. I find the landlord compensated him with a free month rent and no security deposit and rent reductions to put in electric heaters and do some repairs. I dismiss this portion of their claim.

Regarding their claim for \$8612.34 refund of hydro for trailer because the unit was not legal, I find they lived there, had the hydro in their name and operated an unauthorized business while there. I dismiss their claim for the refund of hydro. They had the benefit of this utility while they lived there. I find the landlord freely conceded his responsibility

for the \$39.31 for hydro for the house which the tenant paid after the landlord ceased paying for it so the tenant is given credit for that amount. In respect to their claim for \$500 for a flat deck trailer to move and their claim for compensation for the \$20,000 loan from their father to get a live-in trailer; I find they say the landlord should be responsible for their moving costs as he is forcing them to move and because the landlord is allegedly forcing them to move when they had the rent money and he refused it. I find insufficient evidence to support their allegations. The Act provides for legal Notices to End Tenancy. I find under section 46 of the Act, if the tenant is served a 10 Day Notice as these tenants were, they may either pay the rent within 5 days or make an Application to dispute it. I find they disputed the Notice but the weight of the evidence is that they have not paid rent to either the landlord or agent he employed on June 5, 2017. I find the landlord is not forcing them to move but they are being forced to move due to their own actions in not paying the rent in full on time as required by section 26 of the Act. I dismiss this portion of their claim.

Conclusion:

I grant the landlord an Order for Possession effective August 15, 2017. 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 find the landlord entitled to a monetary order as calculated below and to recover his filing fees for this application.

I dismiss the major portion of the tenant's application for the reasons noted above. However, I find their Application had merit with respect to deductions so I find them entitled to recover their filing fee. This will be noted in the calculation below.

Calculation of Monetary Order

Unpaid Rent including over-holding rent to August 15, 2017	3575.00
Filing fee	100.00
Deduction for amount paid for emergency repair- pump	-470.00
Deduction loss water one day (\$21)plus 1 tank refill (\$99)	-120.00
Deduction for tenant pay for house hydro	-39.31
Less filing fee to tenant	-100.00
Total Monetary Order to Landlord	<u>2945.69</u>

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: August 02, 2017

Residential Tenancy Branch