



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

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

Introduction

This hearing was convened in response to cross- applications by both parties pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows. The tenant applied October 23, 2017 to:

1. Cancel a Notice to End for Unpaid Rent - Section 46

The landlord applied October 27, 2017 for:

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

Both parties attended the hearing. The parties acknowledged the exchange of evidence as provided to this proceeding. The parties were given opportunity to present all relevant evidence and relevant testimony in respect to their claims and to make relevant prior submission to the hearing and participate in the conference call hearing. 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 notice to end tenancy valid?
Should the Notice be cancelled?
Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started in September 2016. Rent in the amount of \$850.00 is payable in advance each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$425.00 which they retain in trust. The landlord claims the tenant failed to pay rent from the month of July 2017 to present day. On October 17, 2017 the landlord served the tenant with a notice to end tenancy for non-payment of rent stating the tenant owed rent of \$3400.00 up to October 2017. The tenant applied to dispute the notice and subsequently provided into evidence *photocopies* of 12 receipts dated January 01, 2017 to December 01, 2017, each for every month of 2017, in the payable amount, on the 1st day of each month and each signed as the landlord. The landlord provided into evidence a series of photo images of their *original yellow receipt book copies* which the tenant acknowledges having received from the landlord during 2017, although they did not have them during this hearing. The parties agreed that the tenant has always paid rent in cash and the tenant testified they paid the landlord in cash every month in 2017.

I addressed to the parties the clear discrepancies in their respective evidence and that under the circumstances some of the evidence did not make sense and was left unexplained.

Analysis

On preponderance of the evidence I find as follows.

I find that the receipt evidence of the landlord and that of the tenant appear in complete contrast to the other in every detail. I primarily note that the signature on the tenant's evidence is in sharp contrast to that of the landlord on their 10 Day Notice to End Tenancy.

I find that if the landlord previously issued receipts, as acknowledged received and available to the tenant, it then does not make sense that the tenant would have double

and different receipts in the same style and format as their entire set of receipts, as they submitted into evidence.

I find that the tenant's rent receipt submissions, when compared with their *notes* submitted into evidence December 23, 2017 are near identical in their style of letters and numbers.

I find that clearly the two sets of receipt evidence cannot both be valid, as the differences are simply too vast and apparent. I find there are discrepancies and unexplained issues with the tenant's evidence as opposed to the landlord's evidence. Therefore I prefer the evidence of the landlord when it comes to the payment of rent. On a balance of probabilities and on preponderance of the evidence I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. I find that on balance of probabilities the tenant has not paid the outstanding amounts of rent despite their application to dispute the landlord's Notice. As a result, their application to set aside the landlord's Notice to End is dismissed. Based on the above facts I find that the landlord is entitled to an **Order of Possession**, with the further result that the tenant's application is dismissed.

I also find that the landlord has established a monetary claim for unpaid rent. The landlord is also entitled to recovery of the filing fee. The security deposit will be off-set from the award made herein.

Calculation for Monetary Order

Unpaid rent July to December 2017	\$5100.00
Unpaid rent January 2018	\$850.00
Landlord's filing fee for the cost of application	\$100.00
<i>Less tenant's security deposit in trust</i>	<i>-\$425.00</i>
Total Monetary Award / landlord	\$5625.00

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.

I Order that the landlord retain the security deposit of \$425.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$5625.00**. If the tenant does not satisfy this Order the Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application is granted. 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: January 11, 2018

Residential Tenancy Branch