



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF OPR DR CNR RR ERP

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt with applications from both parties:

The landlord applied for:

- an Order of Possession pursuant to section 46 of the *Act* for Unpaid Rent;
- a monetary order pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant applied for:

- cancellation of the landlord's notice to end tenancy pursuant to section 55; and
- an Order directing the landlord to perform emergency repairs pursuant to section 33 of the *Act*.

Both the landlord and the tenant appeared at the hearing. The landlord was represented at the hearing by his agent, S.A. (the "landlord"). Both the landlord and the tenant were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The tenant confirmed receipt of the landlord's 10 Day Notice on approximately February 10, 2018 and is found to have been duly served with this notice in accordance with the *Act*.

The tenant confirmed receipt of the landlord's application for dispute resolution and evidentiary package, while he explained that he had sent a copy of his evidentiary

package to the landlord by way of Canada Post Registered Mail on April 25, 2018. A copy of the Canada Post Registered Mail tracking number was provided to the hearing.

Issue(s) to be Decided

Can the tenant cancel the landlord's 10 Day Notice? If not, is the landlord entitled to an Order of Possession?

Can the landlord recover a monetary award for unpaid rent and for the filing fee?

Should the landlord be directed to make emergency repairs to the rental unit?

Background and Evidence

The landlord explained that this tenancy began on August 1, 2017. Rent was \$850.00 per month, and a security deposit of \$425.00 paid at the end of July 2017 continues to be held by the landlord. The tenant said that the property changed hands, and that the current landlord, D.G., purchased the property in early 2018 and informed the tenant on January 16, 2018 that he was the new landlord.

The tenant acknowledged not paying rent for January and February 2018 but argued that he did not feel rent should be due because of the very poor state of the rental unit. In his submissions, the tenant provided some evidence that he had been confined to the bedroom of the rental unit because of the continued presence of mould and the overall poor state of repair. The tenant said that he wished to stay in the rental unit if the landlord agreed to make the necessary repairs.

The landlord's agent said that the landlord was seeking an Order of Possession and a monetary award of \$1,700.00 representing unpaid rent for January and February 2018. As mentioned above, the tenant did not dispute that rent had not been paid for this time, but said that the current landlord should only be due rent for February 2018 because the former landlord was still in possession of the unit in January 2018.

A review of the evidence submitted by the tenant revealed numerous photos purporting to show the poor state of the rental unit, and included written submissions. A review of the landlord's evidentiary package included a copy of the tenancy agreement signed between the former landlord and the tenant, along with a Direct Request worksheet and a copy of the 10 Day Notice.

Analysis

Section 26(1) of the *Act* states, “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.”

A tenant only has a right to deduct all or a portion under the *Act* when they have overpaid a security deposit (section 19) or when the tenant has paid out of pocket for emergency repairs to have been performed, as per section 33 of the *Act*. A tenant is not entitled under the *Act* to withhold rent until emergency repairs are completed when no order from an Arbitrator has directed the landlord to perform emergency repairs.

Based on the tenant’s acknowledgment that rent remained unpaid and a review of the 10 Day Notice issued to the tenant on February 10, 2018, I find the 10 Day Notice to be valid and note that it required the tenant to vacate the premises by February 20, 2018. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award.

The landlord sought a monetary award of \$1,700.00 for unpaid rent of January and February 2018. The tenant acknowledged that rent was not paid for these months but argued that the former landlord was still the owner of the property in January 2018 and that therefore no rent should be due for that month. A review of the evidence submitted to the hearing reveals little indication confirming the date on which the current landlord took possession of the rental home; however, the tenant informed at the hearing that the current landlord met with him on January 16, 2018 that he was the current landlord.

I therefore, find that on a balance of probabilities, that is more likely than not, that the tenant should have been aware of the current landlord's ownership of the building. The tenant sought to rely on second hand information from the other occupants of the building that the former landlord was the person to whom they paid January 2018 rent. This position is difficult to reconcile with the fact that the tenant was aware that the landlord had taken over the property in January 2018. I find that the landlord is entitled under section 67 of the *Act* to a monetary award for January and February 2018.

As the landlord was successful in his application, he may recover the \$100.00 filing fee pursuant to section 72 of the *Act*. Even though the landlord has not applied to do so, I allow the landlord to withhold the tenant's security deposit in partial satisfaction for the monetary award granted.

Since this tenancy is ending by way of a 2 Day Order of Possession, the tenant's application for orders directing the landlord to perform emergency repairs will not be considered and is therefore dismissed.

Conclusion

I make a Monetary Order of \$1,375.00 in favour of the landlord as follows:

Item	Amount
Unpaid rent for February 2018	\$850.00
Unpaid rent for January 2018	850.00
Return of Filing Fee	100.00
Retention of Security Deposit	(-425.00)
Total =	\$1,375.00

The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

I grant an Order of Possession to the landlord effective two days after service of this Order on the tenant. Should the tenant fail to comply with this Order, this Order may be enforced as an Order of the Supreme Court of British Columbia.

The tenant's application is dismissed in its entirety.

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 2, 2018

Residential Tenancy Branch