



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant: (CNR) OLC, FF
Landlord: OPR, MNR, 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 February 28, 2018 to:

1. Cancel a Notice to End for Unpaid Rent - Section 46
2. For the landlord to comply with the Act – Section 62
3. An Order to recover the filing fee for this application - Section 72

The landlord applied March 05, 2018 for:

1. An Order of Possession due to unpaid rent - Section 55
2. A Monetary Order for unpaid rent - Section 67
3. An Order to recover the filing fee for this application - Section 72

Both parties attended the hearing and were given full 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. The parties were given opportunity to mutually resolve their dispute to no avail. 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 October, 2017. Rent in the amount of \$2100.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$1050.00 which they retain in trust. The tenant failed to pay rent in the month of November 2017 and further did not pay rent for December 2017 and January and February 2018 and on February 25, 2018 the landlord personally served the tenant with a notice to end tenancy for non-payment of rent stating the tenant owed rent of \$8400.00. The tenant applied to effectively dispute the notice but did not pay the rent. The tenant further failed to pay all rent in / for the month of March, April and now May 2018. ruary 2017.

The parties testified in respect to matters not relevant to the primary issue at hand in regard s to the unpaid rent.

Analysis

On preponderance of the evidence I find as follows.

Section 26 of the Act in relevant part states;

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.

I find I have not been presented with evidence the tenant had a right under the Act to deduct all or a portion of the rent. Based on the evidence of both parties 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. 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**.

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 November 2017 to May 2018 x \$2100.00	\$14700.00
Landlord's filing fee for the cost of application	\$100.00
<i>Less tenant's security deposit in trust</i>	<i>-\$1050.00</i>
Total Monetary Award / landlord	\$13,750.00

Conclusion

The landlord's application is granted. The tenant's application is **dismissed**, without leave to reapply.

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 \$1050.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$13,750.00**. 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.

This Decision is final and binding.

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 14, 2018

Residential Tenancy Branch