



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDL-S MNRL-S OPR AS CNR ERP FFT LRE MNDCT PSF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for compensation for damage pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order allowing the tenant to assign or sublet pursuant to section 65;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and

- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

GM (“landlord”) appeared on behalf of the landlord and had full authority to do so. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”). In accordance with section 89 of the *Act*, I find that both the landlord and tenant were duly served with each other’s applications. The tenant confirmed receipt of the landlord’s evidence. In accordance with section 88 of the *Act*, I find the tenant duly served with the landlord’s evidence. The tenant did not submit any written evidence for this hearing.

The tenant acknowledged receipt of the 10 Day Notices to End Tenancy issued by the landlord on February 26, 2018, the amended 10 Day Notice on March 1, 2018, and the 10 Day Notice dated April 9, 2018. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notices.

At the beginning of the hearing the landlord indicated that he wished to withdraw his application for compensation for damages at this time, as the tenancy has not yet ended. Accordingly, the landlord’s application for monetary compensation related to damages was cancelled. The tenant indicated at the beginning of the hearing that he wished to withdraw his application to sublet the unit at this time. Accordingly, the tenant’s application to sublet the unit was cancelled.

Issue(s) to be Decided

Should the landlord’s 10 Day Notices be cancelled? If not is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to monetary compensation for unpaid rent?

Are both parties entitled to recover the filing fee for their applications?

Is the tenant entitled to an order for the landlord to make repairs to the rental unit?

Is the tenant entitled to monetary compensation for loss or money owed?

Is the tenant entitled to an order suspending the landlord's right to enter the property?

Is the tenant entitled to a rent reduction for repairs, services or facilities agreed upon but not provided?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on December 1, 2017. Monthly rent is currently set at \$2,000.00, payable on the first of the month. The landlord collected a security deposit of \$1,000.00, and still holds that deposit. The tenant is still residing at the home.

The landlords are seeking an Order of Possession, as well as a Monetary Order for \$7,200.00 in unpaid rent as outlined in the table below and in the landlord's Application:

Item	Amount
Unpaid Rent as of February 2018	\$1,200.00
Unpaid Rent for March 2018	2,000.00
Unpaid Rent for April 2018	2,000.00
Unpaid Rent for May 2018	2,000.00
Total Monetary Order Requested	\$7,200.00

The tenant did not dispute that he had withheld rent as he felt the home was "not worth \$2,000.00". The tenant testified that repairs were not performed by the landlord, and the windows do not close properly. The tenant also testified that because the electricals were not grounded, and shorted, this electrical equipment and laptops were damaged. The tenant testified that he depended on this equipment for his livelihood, and as a result was unemployed, and unable to pay the outstanding rent.

The tenant is seeking compensation in the amount of \$20,001.00 for loss of income (\$5,000.00 x 2 months), the damaged equipment, and losses suffered by the tenant.

In addition to the monetary compensation requested by the tenant, the tenant applied to cancel the 10 Day Notices issued to him for unpaid rent. The tenant also applied for orders for repairs, and to restrict the landlord's access to the home.

Analysis

Section 26 of the Act, in part, states as follows:

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.

The tenant did not dispute the fact that he had failed to pay the full outstanding rent within five days of receiving the 10 Day Notices. The tenant filed an application pursuant to section 46(4) of the *Act*, within five days of receiving the first 10 Day Notice, stating that the landlord had failed in their obligation to perform repairs and provide services as required by the *Act* and tenancy agreement.

Both parties signed the tenancy agreement on November 10, 2017. The rent is clearly set at \$2,000.00 per month. I find that the tenant has not provided sufficient evidence to support that any rent reductions have been approved by the landlord, or an Arbitrator. I find that the tenant was responsible for paying \$2,000.00 in monthly rent as agreed to on the tenancy agreement, and as required by section 26(1) of the *Act*.

I find that the tenant had failed to pay the outstanding rent as required by the *Act*, and I am dismissing the tenant's application to cancel the 10 Day Notices. I find that the 10 Day Notices issued by the landlord are valid, and comply with section 52 of the *Act*.

As the tenant has not moved out by the effective dates of the 10 Day Notices, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. 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.

The tenant did not dispute the fact that he withheld rent in the amount of \$7,200.00, as he felt the home was not worth \$2,000.00 in monthly rent. The tenant did not have the

right under the *Act*, or an order by an Arbitrator to withhold any portion of the rent. I, therefore, grant the landlord's application for \$7,200.00 in unpaid rent. The landlord made an application for recovery of the filing fee for this application. As the landlord was successful in their application I am allowing the landlord to recover \$100.00 for the cost of this application.

The tenant applied for monetary compensation in the amount of \$20,000.01.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

I have considered the testimony of both parties, and while the tenant testified that he had suffered a loss during this tenancy, the tenant did not provide sufficient evidence to establish that the landlord failed to fulfill their obligations as required by the *Act* or tenancy agreement. The tenant did not provide sufficient supporting evidence to demonstrate that he had made requests to the landlord for repairs, nor did the tenant provide sufficient supporting evidence to support that it was due to the landlord's actions that he suffered a loss. As the tenant did not provide sufficient evidence to support how the landlord failed to comply with the *Act*, regulation, or tenancy agreement, and how this loss was solely the result of the landlord's noncompliance, I dismiss the tenant's application for monetary compensation without leave to reapply.

As this tenancy is now over, I dismiss the remaining portion of the tenant's application without leave to reapply. As the tenant was not successful in his application, I dismiss his application to recover the filing fee.

The landlord continues to hold the tenant's security deposit of \$1,000.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit of \$1,000.00 in partial satisfaction of the monetary claim.

Conclusion

The landlord withdrew his application for monetary compensation for damages.

I dismiss the tenant's application to cancel the landlord's 10 Day Notices. I, therefore, grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant and any occupant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

The remainder of the tenant's application is dismissed without leave to reapply.

I issue a \$6,300.00 Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent, and also allows the landlord to recover the filing fee for this application while retaining the tenant's security deposit in partial satisfaction of their monetary claim.

Item	Amount
Unpaid Rent as of February 2018	\$1,200.00
Unpaid Rent for March 2018	2,000.00
Unpaid Rent for April 2018	2,000.00
Unpaid Rent for May 2018	2,000.00

Recovery of Filing Fee	100.00
Less Security Deposit	-1,000.00
Total Monetary Order	\$6,300.00

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court

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 17, 2018

Residential Tenancy Branch