



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR RP

Introduction:

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:20 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:00 p.m. on June 5, 2018]. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference. The tenant applies pursuant to the *Residential Tenancy Act* to cancel the Notice to End Tenancy and for the landlord to do repairs.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

The landlord testified that the tenancy began March 1, 2018 with a rent of \$800 payable on the first of each month and a security deposit of \$400 which was paid. The landlord agent testified that the tenant failed to pay the complete rent for April and was served with a Notice to End the Tenancy on April 23, 2018 for the \$600 shortfall. That rent is still outstanding. The tenant appeared to move out most of his belongings at the end of April 2018 but there are still items in the home. No keys were returned so the tenancy has not ended according to the Act. The landlord requests an Order for Possession effective as soon as possible and a monetary order for outstanding rent. He claims rent for March (\$600), and for \$800 for each of April and May 2018.

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 none of his complaints constitute valid reasons to withhold his rent. Section 26 of the Act requires a tenant to pay rent when due, whether or not the landlord fulfills their obligations under the Act. I have therefore dismissed his 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.

Section 55(4) (b) of the Act provides that the landlord in these circumstances may be granted an order requiring payment of that rent. I find the landlord entitled to a monetary order for \$2200 for outstanding rent from March to May 31, 2018 and to retain the security deposit as requested to offset the amount owing.

The landlord also asked how they might enter and deal with possibly abandoned goods of the tenant. I find Residential Tenancy Regulation 24 and following sections set out the procedure. Part of it is quoted below but I advise the landlord to consult this and the following sections as necessary. This Regulation is available online.

Part 5 — Abandonment of Personal Property
Abandonment of personal property

24 (1) A landlord may consider that a tenant has abandoned personal property if

(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or

(b) subject to subsection (2), the tenant leaves the personal property on residential property

(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or

(ii) from which the tenant has removed substantially all of his or her personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

(4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

Landlord's obligations

25 (1) The landlord must

(a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,

(b) keep a written inventory of the property,

(c) keep particulars of the disposition of the property for 2 years following the date of disposition, and

(d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

(a) the property has a total market value of less than \$500,

(b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or

(c) the storage of the property would be unsanitary or unsafe.

(3) A court may, on application, determine the value of the property for the purposes of subsection (2).

26 (1) *If a tenant claims his or her personal property at any time before it is disposed of under section 25 or 29 [disposal of personal property], the landlord may, before returning the property, require the tenant to*

(a) reimburse the landlord for his or her reasonable costs of

(i) removing and storing the property,

Conclusion:

I grant the landlord an Order for Possession effective two days from service. 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 dismiss the tenant's application without recovery of the filing fee.

I find the landlord entitled to a monetary order as calculated below:

Rent arrears and over holding rent March – May 31, 2018 (\$600 +800+800)	2200.00
Less security deposit	-400.00
Total Monetary Order to Landlord	1800.00

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: June 05, 2018

Residential Tenancy Branch