



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LANDLORD: OPC, OPR, MNR, MNDC, FF
TENANT: CNC, CNR, MT, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notices to End Tenancy for more time to make the application and for other considerations.

Service of the hearing documents by the Landlord to the Tenant was done by registered mail on March 6, 2019 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord was done by registered mail on March 7, 2019 in accordance with section 89 of the Act.

Both parties confirmed the receipt of the other parties' hearing package.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?

Tenant:

1. Is the Tenant entitled to an order to cancel the Notices to End Tenancy?
2. Is the Tenant entitled to more time to make the applications?

Background and Evidence

This tenancy started approximately 5 years ago as a month to month tenancy. Rent is \$800.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$400.00 at the start of the tenancy.

At the start of the hearing the Landlord said the Tenant has unpaid rent for February, March and April 2019 for \$800.00 for each month for a total of \$2,400.00. The Tenant agreed that he has not paid the rent and he said that because the Landlord is evicting him he needs the money for moving costs. The Tenant said he will move out of the unit by April 30, 2019, but he is unwilling to pay the unpaid rent.

The Landlord initially requested an Order of Possession for as soon as possible, but then agreed to end the tenancy on April 30, 2019. The Landlord requested a monetary order in the amount of \$2,400.00 to recover the unpaid rent.

Analysis

Section 26 (1) of the Act says 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 that the Tenant has not paid the overdue rent and the Tenant does not have the right to withhold a part or all of the unpaid rent. Consequently, I dismiss the Tenant's application without leave to reapply as he agrees he has unpaid rent and he is unwilling to paid the unpaid rent. As well the Tenant said he is willing to move out of the rental unit by April 30, 2019.

I accept the Landlords' testimony and evidence that there is unpaid rent in the amount of \$800.00 for each month of February, March and April 2019 in the total amount of \$2,400.00. Consequently, I find for the Landlord and award the Landlord a monetary claim for unpaid rent of \$2,400.00.

In addition as both parties agree to end the tenancy on April 30, 2019 and the Landlord has established grounds to end the tenancy for unpaid rent, I award the Landlord an Order of Possession effective 1:00 p.m. on April 30, 2019.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit as partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$2,400.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$2,500.00
Less:	Security Deposit	\$400.00	
	Subtotal:		\$ 400.00
	Balance Owing		\$2,100.00

Conclusion

An Order of Possession effective April 30, 2019 and a Monetary Order in the amount of \$2,100.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: April 16, 2019

Residential Tenancy Branch