



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Century 21 Performance Realty & Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

For the tenant: CNR, FF

For the landlord: OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the **landlord** and an application by the **tenant**, for Orders pursuant to the *Residential Tenancy Act* (the Act).

Both parties appeared in the conference call hearing and participated with their submissions and testimony. The tenant advised they are still residing in the rental unit.

The tenant sought to cancel a 10 Day Notice for Unpaid Rent (Notice to End).

The landlord sought an Order of Possession due to unpaid rent, a Monetary Order to recover rental arrears and inclusive of recovery of the filing fee associated with this application, and an order to retain the security deposit in partial satisfaction of the monetary claim.

Preliminary matters

The tenant relies on their determination the landlord did not issue the 10 Day Notice to End to the named tenant of the tenancy agreement, signed by the tenant – a corporate entity. The tenant claims they are the Director of the entity and sole occupant of the rental unit – but not the tenant, therefore, they argued the Notice is not a valid notice to the intended tenant or a party to the tenancy. The hearing continued on the merits of the applications with deferral of the tenant's objection to this Decision.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Should the Notice to End be cancelled?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The relevant undisputed evidence in this matter is as follows. The tenancy agreement reflects the landlord entered the tenancy agreement with the corporate entity, signed by the occupant of the rental unit as *an agent* of the entity (the tenant). The tenancy began on September 06, 2012. Rent in the amount of \$1400.00 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 \$700.00. The tenant testified they failed to pay the rent when due in the month of April 2013, and the landlord testified that on April 25, 2013 they served the tenant with a Notice to End tenancy for non-payment of rent. The tenant further failed to pay rent for the month of May 2013. The quantum of the landlord's monetary claim is for the **rent arrears** for the aforementioned 2 months in the amount of \$2800.00. The landlord further seeks an **Order of Possession**.

The tenant does not dispute that the rent has not been paid by either themselves or the corporate entity and does not possess proof of such, or an order from an Arbitrator allowing them to keep all of the rent, or that the tenant held back the rent, with prior notice to the landlord, for the cost of emergency repairs.

Analysis

I find the applicant tenant in this matter signed the tenancy agreement with the landlord, is known by the landlord to occupy the rental unit, and occupies the rental unit, and has enabled the satisfaction of rent, until late. I find that **Section 52** of the Act prescribes the conditions which render the effectiveness of a Notice to End tenancy. In this matter, I find the landlord's Notice meets all of the prescribed conditions of Section 52 in order for the Notice *to be effective*. It cannot be argued that the Notice would have been *perfected* had it also included the name of the corporate entity. None the less, **Section 68** of the Act prescribes that if a Notice to End the Tenancy does not meet the conditions for it to be effective, the Director may amend the Notice *if satisfied that the person receiving the notice knew, or should have known, the information that was omitted from the notice, and it is reasonable to amend the notice*. A full text of the Act can be obtained at www.rto.gov.bc.ca . In this matter, I find that for the purpose of this matter either one of the named applicant tenants are the *tenant*.

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.

Based on the testimony and document evidence of the landlord and the tenant, 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 rent and despite having applied for dispute resolution to dispute the notice to end the tenant has only confirmed that the rent has not been paid and they do not have a right *under the Act* to deduct or withhold rent. Therefore the tenant's application to cancel the landlord's Notice to End for unpaid rent **is hereby dismissed** without leave to reapply. Based on the above facts I find that the landlord is entitled to an **Order of Possession**.

As for the Monetary Order, I find that the landlord has established a claim for \$2800.00 in unpaid rent. The landlord is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$2850**. The security deposit will be off-set from the award made herein.

Calculation for Monetary Order

Rental Arrears	\$2800.00
Filing Fees for the cost of this application	50.00
Less Security Deposit and applicable interest <i>to date</i>	-700.00
Total Monetary Award	\$2150.00

Conclusion

The tenant's application to cancel a Notice to End tenancy for unpaid rent **is dismissed**, without leave to reapply.

The landlord's application is allowed. **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 deposit of \$700.00 in partial satisfaction of their claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$2150.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 28, 2013

Residential Tenancy Branch