



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPR, OPL, CNR, CNL, MNR, MNDC, MNSD, OLC, RP, RR, FF

Introduction

This hearing dealt with three applications, in part, as follows: 1) from the tenant for cancellation of a 10 day notice to end tenancy for unpaid rent or utilities, a monetary order for compensation for loss, an order instructing the landlord to comply with the *Act* and recovery of the filing fee; 2) from the landlord for an order of possession for unpaid rent or utilities, a monetary order for unpaid rent or utilities, retention of the security deposit in partial satisfaction of the claim, and recovery of the filing fee; 3) from the tenant for cancellation of the 2 month notice to end tenancy for landlord's use of property, an order requiring the landlord to make repairs to the unit and allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, and recovery of the filing fee. Both parties and one witness for the landlord participated in the hearing and gave affirmed testimony.

Preliminary Matter

By letter to the Residential Tenancy Branch ("Branch") dated February 4, 2009, landlord's counsel requested that all three of the above applications be heard during the hearing scheduled for February 13, 2009. Counsel forwarded a copy of his letter including all attachments to the tenant.

At the outset of the hearing the tenant sought clarification of counsel's request, noting that his application for cancellation of the 2 month notice to end tenancy for landlord's use of property had been scheduled for hearing on March 12, 2009. In discussion, the tenant confirmed that he had received a copy of counsel's request including attachments, and he queried the landlord's "good faith" intentions with regard to the

notice to end tenancy. As to having his application heard at this hearing versus one next month, he stated that evidence he may provide at a later hearing could be comprised of witness statements attesting to the landlord's desire to evict him from the unit using any and all authorized means. On the basis of all the information available, I determined that the tenant had sufficient time to prepare for all three applications to be heard on February 13, 2009 and that his position would not be prejudiced as a result. Accordingly, the parties proceeded to give affirmed testimony and spoke to documentary evidence in association with all three applications during this hearing.

Issues to be Decided

- Whether the tenant is entitled to cancellation of a notice to end tenancy
- Whether the landlord is entitled to an order of possession
- Whether either or both parties are entitled to monetary or other orders under the *Act*

Background and Evidence

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began on April 16, 2004 and a security deposit of \$475.00 was collected on that same date. Currently, rent in the amount of \$1,000.00 is payable in advance on the first day of each month.

Arising from the landlord's position that the tenant was in arrears with rent and utilities, the landlord issued a 10 day notice to end tenancy dated January 15, 2009. Pursuant to decisions issued by dispute resolution officers dated December 1, 2008 and October 2, 2008 (Amended), the tenant then undertook calculations and made what he considered were correct payments due for rent and utilities in care of the landlord's counsel. The tenant also sought to have the landlord's notice to end tenancy set aside.

Subsequently, the landlord sought an order of possession pursuant to a 2 month notice to end tenancy for landlord's use of property dated January 27, 2009. A copy of the notice was submitted into evidence and shows the date by when the tenant must vacate the property as March 31, 2009.

Pursuant to provisions set out in section 51 of the *Act*, (**Tenant's compensation: section 49 notice**) enclosed with a letter to the tenant from landlord's counsel dated January 28, 2009, was a cheque made payable to the tenant in the amount of \$1,032.00, "representing compensation equal to one month's rent" for March 2009. Counsel later determined that this cheque exceeded the monthly rent by \$32.00.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 2 month notice to end tenancy for landlord's use of property. The reason identified on the notice for its issuance is as follows:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

Section 49 of the *Act* addresses **Landlord's notice: landlord's use of property**. Specifically, section 49(3) states:

49(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Into evidence the landlord submitted a sworn Affidavit from her son. In the Affidavit the landlord's son sets out that he is scheduled to move into the unit on April 1, 2009.

The tenant disputed the 2 month notice by filing an application for dispute resolution within 15 days of receiving the notice. During the hearing the tenant questioned the genuineness of the landlord's intentions and stated his view that the landlord has had a

longstanding desire to have him vacate the unit. During the hearing the tenant's son reiterated that it is his intention to move into the unit from the beginning of April 2009.

Residential Tenancy Policy Guideline # 2 speaks to **Ending a Tenancy Agreement: Good Faith Requirement**, and sets out in part, as follows:

The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

If the "good faith" intent of the landlord is called into question, the burden is on the landlord to establish that he/she truly intends to do what the landlord indicates on the Notice to End, and that he/she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord's primary motive.

During the hearing the tenant's attention was drawn to the sworn Affidavit of the landlord's son, and the attention of both parties was drawn to the provisions set out in section 51(2) of the *Act*, as follows:

51(2) In addition to the amount payable under subsection (1), if

- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
- (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

While the tenant challenged the landlord's motivation for issuing the 2 month notice, the tenant had an opportunity to question the landlord and her son on the matter and nothing stated by either the landlord or her son served to undermine the stated intention of the son to move into the unit after the end of March 2009.

In consideration of all the above information, I find that the landlord is entitled to an order of possession and the tenant's application for cancellation of the 2 month notice to end tenancy is therefore set aside. The order of possession is effective not later than 1:00 pm, March 31, 2009.

Pursuant to section 63 of the *Act*, discussion between the parties during the hearing led to clarification and resolution of other aspects of the dispute. Specifically, it was agreed during the hearing as follows:

- 1) that the landlord withdraws the 10 day notice to end tenancy for unpaid rent or utilities dated January 15, 2009;
- 2) that rent has been paid in full to the end of February 2009;
- *3) that the landlord and tenant will schedule a move-out condition inspection and complete a move-out condition inspection report at the end of tenancy;*
- *4) that resolution of the tenant's security deposit will be achieved following the completion of the move-out condition inspection and report;*

* The parties are referred to related sections of the Act, as follows:

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Section 37: Leaving the rental unit at the end of tenancy

Section 38: Return of security deposit and pet damage deposit

Section 39: Landlord may retain deposits if forwarding address not provided

- 5) that the landlord will not seek reimbursement of the \$32.00 overpayment included in the cheque forwarded to the tenant in the amount of \$1,032.00 for March rent, pursuant to section 51(1) of the *Act*;
- 6) that the tenant will forward \$1,000.00 from the above cheque to the landlord by no later than March 1, 2009 in payment of rent for March 2009;
- 7) that following from the tenant's earlier payments to the landlord in care of the landlord's counsel in 2009, and in anticipation of the tenant's payment of \$1,000.00 from the cheque, as above, no payment of rent and utilities otherwise currently remains outstanding;
- 8) that the parties will absorb the cost of filing fees for their respective applications.

Conclusion

I hereby issue an order of possession in favour of the landlord effective not later than **1:00 pm, March 31, 2009**. This order must be served on the tenant. 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.

DATE: February 18, 2009

Dispute Resolution Officer