

## Decision

### **Dispute Codes:**

CNC, MNSD, OLC, FF, LRE

### **Introduction**

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence of both parties prior to the Hearing. The Tenant and the Landlord agent gave affirmed evidence and this matter proceeded on its merits.

### **Preliminary Matters**

At the onset of the Hearing, the Landlord requested an adjournment because he was calling from work. The Landlord testified that his job requires him to be on call, and that today he is working. The Landlord testified that he did not obtain written consent of the Tenant to reschedule the Hearing and that an Information Officer had advised him that he could ask for an adjournment on the day of the Hearing.

### **Analysis – Respondent’s Request for Adjournment**

Rule 6.1 of the Rules of Procedure states that the Residential Tenancy Branch will reschedule a dispute resolution proceeding if “*written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least three (3) business days before the scheduled date for the dispute resolution proceeding.*”

In some circumstances proceedings can be adjourned after the hearing has commenced. However, there is mandatory requirement that the Dispute Resolution

Officer, (DRO), must look at the oral or written submissions of the parties; and must consider whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose] and whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding. The DRO must also weigh the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and assess the possible prejudice to each party.

This Hearing dealt with the Tenant's Application submitted on February 26, 2009 with the Hearing scheduled for April 21, 2009. The Tenant's application includes a request that a One Month Notice to End Tenancy for Cause be cancelled. Delaying the Hearing further, particularly for the purpose of scheduling a reconvened Hearing to a date when the Landlord is not working, would be prejudicial to both parties. There is no guarantee that the Landlord will not be working on the day the Hearing is reconvened.

Accordingly, I found that there was not adequate justification under the Act and Rules of Procedure to support imposing an adjournment on the other party. Therefore the Landlord's request for an adjournment was denied.

The Landlord remained in the Hearing for the duration of the Hearing.

### **Mutual End of Tenancy Agreement**

The Landlord and the Tenant came to a mutual agreement with respect to the end of the tenancy. The Tenant will vacate the rental unit by 1:00 p.m. on June 30, 2009.

The Landlord will have an Order of Possession for 1:00 p.m., June 30, 2009.

### **Issue(s) to be Decided**

- (1) Is the Tenant entitled to a monetary order for loss of peaceful enjoyment?
- (2) Should the Landlord be ordered to comply with the Act?

- (3) Should the Landlord's right to enter the rental unit be restricted?
- (4) Is the Tenant entitled to recover the cost of the filing fee from the Landlord?

### **Background and Evidence**

The Landlord was served with the Tenant's Application and Notice of Hearing package by registered mail. The parties admitted service of each other's evidence packages.

The rental unit is located in the front portion of a house. The Tenant shares the rental unit with other tenants. The Landlord lives in the back portion of the house and shares a common laundry area with the front portion of the house.

The Tenant pays rent in the amount of \$500.00 per month. The Tenant did not pay a security deposit to the Landlord, nor was a security deposit requested by the Landlord. The Tenant has lived in the rental unit since January 5, 2007.

### **Tenant's evidence**

The Tenant stated that the Landlord continues to enter the rental unit without permission and without notice. The Tenant provided evidence alleging that the Landlord had assaulted him in February, 2009. The Tenant stated that the Landlord used to join him for a cigarette in the rental unit, but that since the Landlord quit smoking, he was being harassed about smoking in the rental unit. The Tenant stated that there is no "no smoking" clause in the tenancy agreement. The Tenant applied for a monetary order in the amount of \$5,000.00 for loss of peaceful enjoyment.

### **Landlords' evidence**

The Landlord admitted that he had entered the rental unit without permission or notice, but that it was in order to air the place out.

## **Analysis**

During the Hearing, the parties reached a mutual agreement to end the tenancy on June 30, 2009. The Landlord is entitled to an Order of Possession for June 30, 2009, and I make that order.

The Tenant did not prove his monetary claim for \$5,000.00. He did not provide a detailed calculation as to how he arrived at his claim, and I dismiss this portion of the Tenant's application.

The Landlord does not provide housekeeping or related services under the terms of the tenancy agreement. Section 29 of the Act states, as follows:

### **Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The Landlord is entitled to enter the rental unit, but only if he complies with Section 29 of the Act. The Landlord is ordered to comply with Section 29 of the Act.

The Tenant is entitled to recover the cost of the \$50.00 filing fee from the Landlord. Pursuant to Section 72(2)(a) of the Act, the Tenant may deduct the \$50.00 from rent due to the Landlord.

### **Conclusion**

The Landlord is ordered to comply with Section 29 of the Act.

The Tenant may deduct \$50.00 from rent due to the Landlord.

I issue an Order of Possession effective June 30, 2009. This order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

April 21, 2009

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