



Dispute Resolution Services

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

Decision

Dispute Codes: OPL, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for an order of possession, a monetary order for damage to the unit, unpaid rent and money owed for damage or loss under the Act, retention of the security deposit, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to any or all of the above

Background and Evidence

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began on July 3, 1999. Rent in the amount of \$800.00 is payable on the first day of the month, and a security deposit of \$400.00 was collected on August 1, 1999.

The landlord issued a 2 month notice to end tenancy for landlord's use of property dated April 26, 2009. The date shown on the notice by when the tenants must vacate the unit is June 30, 2009. The landlord's witness (sister) testified that she affixed the notice to the tenants' door with tape on April 26, 2009, however, the tenants deny ever having received the notice. While the tenants currently still reside in the unit, the parties agree that rent has not been paid for June, July or August 2009.

The circumstances of the dispute are further complicated by a previous agreement made between the parties whereby the tenants were to purchase the unit from the

landlord. While the purchase did not proceed, the landlord continues to hold a down payment from the tenants in the amount of \$10,000.00.

During the hearing the parties exchanged views on the circumstances surrounding the broad dispute and undertook to achieve a resolution.

Analysis

Section 63 of the Act provides that the parties may undertake to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a resolution of the dispute. Specifically, it was agreed as follows:

- that the tenants will vacate the unit effective no later than 1:00 p.m., Monday, August 31, 2009, and that an *order of possession* will be issued in favour of the landlord to that effect;
- that the landlord will retain the tenants' security deposit in the full amount of \$400.00 plus all interest accrued since its collection;
- that the landlord will make cheque payment to the tenants in the amount of \$6,000.00, and deliver it "in trust" to the office of the tenants' legal counsel, Mr. B.W., and that a *monetary order* will be issued in favour of the tenants to that effect;
- that the above cheque will be dated not later than August 31, 2009;
- that the landlord will deliver the above cheque to Mr. B.W.'s office by no later than Noon, Monday, August 31, 2009;
- that the tenants will not take delivery of the above cheque until
 - o a) after they have satisfied themselves by speaking with Mr. B.W. that he has possession of the cheque, and

- b) after 1:00 p.m. on Monday, August 31, 2009 when they have vacated the unit.
- that the above particulars comprise full and final settlement of all aspects of the dispute arising from this tenancy for both parties.

As the parties have agreed that all matters of dispute are settled pursuant to the details set out above, I hereby dismiss the landlord's application for recovery of the filing fee.

Conclusion

Pursuant to all of the above, I hereby issue an order of possession in favour of the landlord effective not later than **1:00 p.m., Monday, August 31, 2009**. This order must be served on the tenants. Should the tenants 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.

Following from the above, I hereby issue a monetary order in favour of the tenants in the amount of **\$6,000.00**. This order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

Finally, as agreed by the parties, I hereby order that the landlord may retain the full security deposit plus all interest accrued since its collection.

DATE: August 26, 2009

Dispute Resolution Officer