

## **DECISION**

Dispute Codes      OPR MNR MNSD  
                              CNR OLC

### **Introduction**

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

The Landlord filed seeking an Order of Possession for unpaid rent, a monetary order for unpaid rent and to keep the security deposit.

The Tenant filed seeking an Order to cancel the notice for unpaid rent and to Order the Landlord to comply with the Act.

Service of the hearing documents by the Landlord to the Tenant was done in accordance with section 89 of the *Act*, sent via registered mail on February 9, 2010. The Tenant confirmed receipt of the hearing package and evidence sent by the Landlord.

Service of the hearing documents by the Tenant to the Landlord was done in accordance with section 89 of the *Act*, sent via registered mail on January 22, 2010. The Landlord confirmed receipt of the hearing package and evidence sent by the Tenant.

The Landlord, Landlord's Witness, the Tenant, and the Tenant's Advocate appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

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

Is the Landlord entitled to an Order of Possession for unpaid rent under section 55 of the *Residential Tenancy Act*? (Act)

Is the Landlord entitled to a Monetary Order a) for unpaid rent; and b) to keep the security deposit under sections 38 and 67 of the *Residential Tenancy Act*?

Is the Tenant entitled to an Order to cancel the 10 Day Notice to End Tenancy for unpaid rent under section 46 of the *Residential Tenancy Act*?

Is the Tenant entitled to an Order to have the Landlord comply with the *Residential Tenancy Act*?

### Background and Evidence

The Witness attended and advised that he has assisted the Landlord with repairs to the rental unit and that he knows that the Tenant has not been paying her rent or has been paying her rent late. The Witness confirmed that he has never served documents on behalf of the Landlord and has never issued notices to the Tenant on behalf of the Landlord.

The Landlord was not able to provide testimony as to when the Tenant occupied the rental unit. The person who attended the hearing later disclosed, after several questions, that he was not the Landlord and he was the Agent for the Landlord. The Agent argued that he was a friend of the Landlord, not an employee of the Landlord, and that he was taking care of the Landlord's property while the Landlord was out of the country. The Agent advised that he was living in the Landlord's house during this time.

The Tenant testified that she entered into a verbal tenancy agreement with the Agent effective November 1, 2009 and that she was allowed to move into the rental unit early, at no charge, during the last couple of days of October 1, 2009. The Tenant confirmed that rent was payable on the first of each month in the amount of \$525.00 and a security deposit of \$262.50 was paid directly to the owner of the rental unit by the Ministry of Housing and Social Development on or before November 1, 2009 as supported by the Tenant's documentary evidence.

The Tenant argued that prior to February 2010 she had always paid her rent in cash, that her rent is paid in full, and the Agent would did give her receipts for these rent payments.

The Agent confirmed that he did not provide receipts for rent and he argued that the Tenant is always late paying her rent. When the Tenant failed to pay the January 1, 2010 rent a 10 Day Notice to End Tenancy was issued by the Agent and posted to the Tenant's door on January 13, 2010. The Agent testified that he received \$225.00 near the end of January 2010 as payment towards the January 2010 rent. The Agent argued that he could not provide testimony as to the exact date this January 2010 payment was received or when previous payments were received. The Agent confirmed that the \$225.00 was paid after the 10 Day Notice was issued and stated that someone else does the bookkeeping of when and how much rent is received.

The Tenant referred to her documentary evidence of photo copies of two money orders which total \$525.00 for February 2010 rent and stated that the Agent as not been by to pick up these payments.

The Tenant then referred to her evidence of a 2 Month Notice to End Tenancy that was issued to her on February 2, 2010. The Tenant requested that her application for dispute resolution be amended to request to cancel the 2 Month Notice to End Tenancy that was issued to her after she filed her application on January 20, 2010.

The Agent confirmed that he served the Tenant the 2 Month Notice to End Tenancy on February 2, 2010. The Landlord initially testified that the 2 Month Notice was issued because the Agent needed to complete renovations by replacing the kitchen cabinets and repairing the front entrance that is mouldy. The Agent later stated that the 2 Month Notice was issued after receiving advice from the local access centre to issue the second notice as backup in case the 10 Day Notice was not upheld.

I asked the Agent if he would be stopping by to pick up the February 2010 and March 2010 rent and the Agent stated that he would not be picking up any rent from the Tenant as he wants her out of the rental unit.

As the Agent was not co-operative with making arrangements to have the rent paid I instructed the Tenant to have a witness watch her place the two money orders for February 2010 rent in an envelope and go with the Tenant to the Agent's residence and watch the Tennant tape the envelope to the Landlord's door.

The Tenant then changed her request to amend her application to dispute the 2 Month Notice to End Tenancy as she is fearful of what the Agent will do. The Tenant testified that she will be vacating the rental unit by March 31, 2010 and that she wanted to use her one month compensation regarding the 2 Month Notice to End Tenancy as payment for March 2010 rent.

The Tenant provided testimony regarding an incident which occurred on January 12, 2010 while the Tenant was out of town and she had a guest house sitting and babysitting the Tenant's dog at the rental unit. The Tenant stated that the Agent broke into the rental unit and entered with the Agent's Rottweiler dog to intimidate the Tenant's guest into leaving the rental unit.

When asked if the incident happened the Agent replied, "yes that's true".

## Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for loss which results from the other's non-compliance, must do whatever is reasonable to minimize the loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The Agent has applied on February 2, 2010 for a monetary order in the amount of \$1,075.00 and the 10 Day Notice to End Tenancy was issued on January 12, 2010 for rent owing in the amount of \$525.00. There is no evidence before me to prove that rent remains unpaid for January 2010 or any prior period. Based on the aforementioned I hereby dismiss the Landlord's claim of \$1,075.00, without leave to reapply.

The Agent accepted a payment of \$225.00 after the issuance of the 10 Day Notice and did not issue the Tenant a receipt for "use and occupancy only"; therefore the Agent has created an implied waiver of the 10 Day Notice and reinstated the tenancy. Based on the above I hereby cancel the 10 Day Notice to End Tenancy issued on January 12, 2010, and dismiss the Landlord's request for an Order of Possession, without leave to reapply.

The evidence supports that February 2010 rent has not been picked up by the Agent. The Tenant is hereby ordered to deliver the money orders for full payment of February 2010 rent to the Landlord's residence and tape the envelope to the Agent's door, in the presence of a Witness.

The Tenant has not disputed the 2 Month Notice to End Tenancy issued on February 2, 2010, and provided the Landlord with notification during the hearing that she wished to

use the compensation, which is equivalent to one month's rent, as payment of her March 2010 rent, in accordance with section 51 of the Act. The Tenant stated that she will vacate the rental unit on or before March 31, 2010 at 1:00 p.m.

The Agent has admitted to previously breaking into the rental unit and entering with his Rottweiler to intimidate and or threaten the occupant into leaving the rental unit. I find these actions to be an egregious violation of sections 28 and 29 of the Act. The Tenant has acknowledged that she is fearful of the Agent and what he might do given his previous behaviors.

Based on the above, I hereby issue an Order prohibiting the Agent, or anyone the Agent or the Landlord designates, from attending at or entering the rental unit until after March 31, 2010, at 1:00 p.m., in accordance with section 70 of the Act.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the Agent and the Tenant to familiarize themselves with their rights and obligations as set forth under the *Residential Tenancy Act*.

### Conclusion

The 10 Day Notice to End Tenancy dated January 12, 2010, is hereby cancelled and is of no force or effect.

The Agent is hereby ordered to comply with the *Residential Tenancy Act*.

The Agent or anyone the Agent or the Landlord designates is hereby prohibited from attending at or entering the rental unit until after March 31, 2010, at 1:00 p.m.

The Tenant is hereby ordered to tape an envelope containing February rent payment in full to the door at the Agent's residence no later than Tuesday March 9, 2010 at 7:00 p.m., in the presence of a witness.

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: March 04, 2010.

---

Dispute Resolution Officer