

## **Decision**

**Dispute Codes:** CNR, MNDC, RR, FF

### **Introduction**

This hearing dealt with the tenant's application for cancellation of a notice to end tenancy for unpaid rent or utilities / a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement / authority to reduce rent for repairs, services or facilities agreed upon but not provided / and recovery of the filing fee. Both parties were represented in the hearing and gave affirmed testimony.

At the outset of the hearing, the tenant's advocate requested that the tenant's application be amended to reflect the tenant's request to cancel the 10 day notice to end tenancy for unpaid rent or utilities, *not* the 1 month notice to end tenancy for cause. The landlord's agent did not object to this request and, accordingly, the application was so amended. It is understood that the tenant may file a separate application to dispute the landlord's 1 month notice to end tenancy for cause.

### **Issues to be decided**

- Whether the tenant is entitled to any or all of the above under the Act, regulation or tenancy agreement

### **Background and Evidence**

Pursuant to a written tenancy agreement, the tenancy began on October 1, 2007. Currently, the base amount of monthly rent is \$997.00; with utilities and so forth added, the total amount due and payable each month is \$1,213.00. A security deposit of \$544.00 was collected on September 24, 2007.

Arising from rent which remained unpaid on February 1, 2011 (\$683.00), the landlord issued a 10 day notice to end tenancy for unpaid rent or utilities dated February 2, 2011. The notice was served by way of delivery to the tenant's mailbox on that same date. Pursuant to section 90 of the Act, the notice is deemed to be received 3 days later on February 5, 2011. The landlord's agent testified that the tenant paid the full amount overdue on February 10, 2011, which is within the 5 day period available following service of the notice. In the result, the notice has no effect and the tenancy carries on in full force and effect. The parties stated that they understand all of the foregoing and that there is no disagreement. Further, the landlord's agent stated that all rent due for March 2011 has also been paid in full.

During the hearing the parties undertook to achieve a resolution of the monetary aspect of the tenant's application.

### **Analysis**

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca/](http://www.rto.gov.bc.ca/)

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

- that, weather permitting, the landlord will remedy the following 3 issues in dispute at the tenant's unit by no later than midnight, Saturday, April 2, 2011:
  - i) remove pavers in backyard, level yard with "crush" or equivalent, and re-install pavers;
  - ii) level the slant / slope of concrete steps;
  - iii) install exit gate from the backyard.
- that the tenant withdraws her application to recover the \$100.00 filing fee;
- that the landlord will credit the tenant in the amount equivalent to 2 months' base rent totaling \$1,994.00 (2 x \$997.00), and that a monetary order will be issued in favour of the tenant to this effect; depending on how circumstances unfold with regard to the longevity of the tenancy, the manner in which this equivalency may be effected includes, but is not necessarily limited to, the following:
  - i) should the tenancy end on March 31, 2011, the landlord will issue a cheque made payable to the tenant in the amount of \$1,994.00;
  - ii) should the tenancy continue into April 2011, the tenant may withhold \$997.00 from the amount otherwise due and payable in April 2011;
  - iii) should the tenancy continue into April but end on April 30, 2011, the tenant may withhold \$997.00 from the amount otherwise due and payable in April 2011, and the landlord will issue a cheque made payable to the tenant in the amount of \$997.00;

- iv) should the tenancy continue into May 2011, the tenant may withhold \$997.00 from the amount otherwise due and payable in May 2011.

### **Conclusion**

The landlord's 10 day notice to end tenancy for unpaid rent or utilities is hereby set aside, with the effect that the tenancy continues in full force and effect.

The tenant's application to recover the filing fee is withdrawn.

Pursuant to the agreement reached between the parties during the hearing, all remaining aspects of the dispute which are presently before me are settled.

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenant in the amount of \$1,994.00. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

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*.

DATE: March 1, 2011

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Residential Tenancy Branch