

## **Decision**

**Dispute Codes:** CNC, FF

### **Introduction**

This hearing was convened in response to an application by the tenants for cancellation of a notice to end tenancy for cause / and recovery of the filing fee; during the hearing the landlord confirmed that she seeks an order of possession. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether either party is entitled to any of the above under the Act

### **Background and Evidence**

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the term of tenancy is from February 15, 2011 to February 29, 2012. Evidence includes a copy of the “addendum” to the tenancy agreement. The parties agree that monthly rent is \$1,000.00 and that a security deposit of \$500.00 was collected. Further, the parties agree that the tenants own 2 dogs, and that while the “addendum” to the tenancy agreement provides that the tenants will pay a pet damage deposit of \$200.00 for each of the 2 dogs by not later than June 30, 2011, this pet damage deposit was not paid.

The landlord issued a 1 month notice to end tenancy for cause dated June 30, 2011. The reasons shown on the notice for its issuance are as follows:

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement

The tenants filed an application to dispute the notice on July 15, 2011.

During the hearing the parties undertook to achieve a resolution of the dispute.

### **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 the tenants will vacate the unit by not later than 1:00 p.m., Wednesday, August 31, 2011, and that an order of possession will be issued in favour of the landlord to that effect.

As the parties achieved a negotiated settlement of the central issue in dispute which concerns possession of the unit, I find that the tenants have established entitlement to recovery of \$25.00, which is half the filing fee. While recovery of this amount might usually be by way of withholding \$25.00 from the next regular payment of monthly rent, in view of this late date in July, in the alternative I hereby issue a monetary order in favour of the tenants.

Within the tenants' documentary submission, there is an additional request to recover the cost of registered mailing of the hearing package to the landlord. In this regard, section 72 of the Act addresses **Director's orders: fees and monetary orders**. In short, with the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the tenants' application is hereby dismissed.

For ease of reference, additional sections of the Act which are most immediately relevant to the circumstances of this dispute are identified below.

Section 47 of the Act speaks to **Landlord's notice: cause**, and provides in part:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (h) the tenant
  - (i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**, and provides as follows:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29 of the Act speaks to **Landlord's right to enter rental unit restricted**, and provides in part:

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.

Section 33 of the Act addresses **Condition inspection: end of tenancy**, and provides as follows:

33(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

- (a) on or after the day the tenant ceases to occupy the rental unit, or
  - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
  - (b) the tenant has abandoned the rental unit.

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**, and provides in part:

38(1) Except as provided in subsection (3) or (4)(a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Further, section 38(6) of the Act provides:

38(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

### **Conclusion**

Pursuant to the agreement reached between the parties during the hearing, I hereby issue an **order of possession** in favour of the landlord effective not later than **1:00 p.m., Wednesday, August 31, 2011.** 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.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$25.00**. 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: July 28, 2011

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Residential Tenancy Branch