

## **Decision**

**Dispute Codes:** MNR, ERP, RP, PSF, RR

### **Introduction**

A previous hearing was held on July 4, 2011 in response to applications by both parties. In the result, an order of possession was issued in favour of the landlord to be effective two (2) days after service on the tenants; the order of possession arose out of the landlord's issuance of a 10 day notice to end tenancy for unpaid rent or utilities. Thereafter, it appears that the tenancy was reinstated following the landlord's acceptance of previously unpaid rent from the tenants. Currently, rent has been paid to the end of August 2011. Other aspects of the landlord's application were dismissed with leave to reapply.

Following the last hearing, the landlord issued a 1 month notice to end tenancy for cause. In response, the tenants have applied to dispute the notice and a hearing was scheduled for September 9, 2011 at 1:30 p.m.

Finally, pursuant to the decision of July 4, 2011, the tenants' application for outcomes virtually identical to those sought in the present hearing was dismissed with leave to reapply.

The present hearing was convened in response to the tenants' application for a monetary order as compensation for the cost of emergency repairs / an order instructing the landlord to make emergency repairs for health or safety reasons / an order instructing the landlord to make repairs to the unit, site or property / an order instructing the landlord to provide services or facilities required by law / and permission to reduce rent for repairs, services or facilities agreed upon but not provided. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether the tenants are entitled to any or all of the above under the Act, Regulation or tenancy agreement

### **Background and Evidence**

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the fixed term of tenancy is from April 1, 2011 to March 31, 2012. Monthly rent of \$1,800.00 is

payable in advance on the first day of each month, and a security deposit of \$900.00 was collected. There is no evidence of a move-in condition inspection report.

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

### **Analysis**

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., Friday, September 30, 2011, and that an order of possession will be issued in favour of the landlord to that effect;
- that the tenants will withhold \$500.00 from the next regular payment of monthly rent, such that rent due and payable on September 1, 2011 will be limited to \$1,300.00 (\$1,800.00 - \$500.00);
- that the tenants withdraw their application for dispute resolution which has resulted in the scheduling of a hearing on September 9, 2011 at 1:30 p.m., such that the hearing is now cancelled;
- that the above particulars comprise full and final settlement of all aspects of the dispute for both parties, which arise out of this tenancy and which are currently before me.

As the tenancy nears an end, the attention of the parties is drawn to particularly relevant sections of the Act, as set out below.

Section 35 of the Act addresses **Condition inspection: end of tenancy**, and provides as follows:

35(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 speaks to **Return of security deposit and pet damage deposit**, and provides, in part, as follows:

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.

The parties are encouraged to resolve the disposition of the security deposit directly between them at the end of tenancy.

**Conclusion**

I hereby issue an **order of possession** in favour of the landlord effective not later than **1:00 p.m., Friday, September 30, 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.

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: August 9, 2011**

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Residential Tenancy Branch