

## **Decision**

**Dispute Codes:** OPR, MNR, MND, MNSD, DRI, CNL, CNR, FF

### **Introduction**

This hearing was convened in response to 2 applications: i) by the landlords for an order of possession / a monetary order as compensation for unpaid rent or utilities / compensation for damage to the unit, site or property / retention of the security deposit / and recovery of the filing fee. During the hearing I granted the landlords' verbal request to amend their application to include retention of the security deposit. ii) by the tenant to dispute an additional rent increase / cancellation of the landlords' notice to end tenancy for landlord's use of property / cancellation of a notice to end tenancy for unpaid rent or utilities / and recovery of the filing fee. The landlords participated in the hearing and gave affirmed testimony.

Despite scheduling of the hearing in response to applications by both parties, and despite in-person service by the landlords on July 15, 2011 of the application for dispute resolution and notice of hearing on the tenant, the tenant did not appear.

### **Issues to be decided**

- Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement

### **Background and Evidence**

The landlords in attendance to the hearing are the current landlords, however, the principal documentation related to the tenancy was created by "JL," a family member, and agreements entered into with the tenant(s) were also entered into by "JL" as the landlord.

The tenancy agreement refers to an upstairs unit and a basement unit. Pursuant to a written tenancy agreement, the tenancy began on October 1, 2010. The tenancy agreement provides for the option of either a month-to-month tenancy, or a fixed term tenancy until September 30, 2011 (thereafter becoming a month-to-month tenancy); however, no manual notations have been made on the tenancy agreement confirming which option the parties chose.

Monthly rent is \$1,100.00, however, the tenancy agreement provides that it will be increased to \$1,200.00 in the event that "there is no rent continuity;" this appears to mean that rent will become \$1,200.00 at such time as the basement tenant may vacate

the unit and not pay her rent. The landlords testified to their understanding which is that a separate written tenancy agreement was created for the basement unit, however a copy of same is not in evidence. A security deposit of \$550.00 was collected at the start of tenancy. There is no move-in condition inspection report in evidence.

The landlords understand that the basement tenant vacated the unit in March of 2011.

With respect to rent for July 2011, the landlords issued a 10 day notice to end tenancy for unpaid rent dated July 9, 2011. The notice was served in person on the tenant on that same date. A copy of the notice was submitted into evidence. Subsequently, the tenant made no further payment toward rent and is thought to have vacated the unit on or about August 4, 2011.

The tenant left no forwarding address and the landlords found a unit requiring significant cleaning and repairs. There is no move-out condition inspection report in evidence.

### **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)

Based on the documentary evidence and the affirmed / undisputed testimony of the landlords, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated July 9, 2011. While the tenant filed an application to dispute the notice, the tenant did not attend the hearing scheduled in response to her application. Further, the tenant did not pay the outstanding rent within 5 days of receiving the notice, and she subsequently vacated the unit without notifying the landlords, and without providing a forwarding address. Accordingly, I find that the landlords are entitled to an order of possession.

Based on the documentary evidence and the affirmed / undisputed testimony of the landlords, the various aspects of the landlords' monetary claim and my findings around each are set out below:

**\$1,100.00\***: unpaid rent for July. I find that the landlords have established entitlement to the full amount claimed. In the absence of any documentary evidence pertaining to the specific tenancy agreement entered into between the landlord and the tenant in the basement unit, I dismiss any aspect of the landlords' application concerning recovery of rent in excess of \$1,100.00 per month.

**\$1,100.00\***: *loss of rental income for August*. First, on the basis of the incomplete written tenancy agreement, I find that the subject tenancy is a month-to-month tenancy. In relation to this finding, the attention of the parties is drawn to section 45 of the Act which speaks to **Tenant's notice**, and provides in part:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the tenant abandoned the unit and failed to comply with the above statutory provisions. I also find that the unit was left in need of cleaning and repairs. In the result, I find that the landlords have established entitlement to the full amount claimed.

**\$250.00**: *damaged refrigerator*. Section 23 of the Act addresses **Condition inspection: start of tenancy or new pet**, and section 35 of the Act speaks to **Condition inspection: end of tenancy**. In the absence of the comparative results of move-in and move-out condition inspection reports, or receipts / invoices in support of actual costs incurred for any cleaning or repairs, this aspect of the application is hereby dismissed.

**\$500.00**: *damage to veranda floor and carpet*. For reasons identical to those set out immediately above, this aspect of the application is hereby dismissed.

**\$350.00**: *garbage removal fees / restoration of neglected yard*. For reasons identical to those set out immediately above, this aspect of the application is hereby dismissed.

**\$494.37\***: *water bill*. I find that the landlords have established entitlement to the full amount claimed.

**\$175.00**: *property management fees*. Section 72 of the Act addresses **Director's orders: fees and monetary orders**. 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, or to costs

associated with what are commonly considered to be the costs of doing business. Accordingly, this aspect of the claim is hereby dismissed.

**\$50.00**\*: filing fee. As the landlords largely succeeded with their application, I find that they have established entitlement to the full amount claimed.

During the hearing the landlords withdrew the aspect of their claim concerning \$75.00 for costs related to a bedroom lock installed without authorization by the tenant.

Sub-total: **\$2,744.37**

As for the monetary order, I find that the landlords have established a claim of **\$2,744.37**, as set out in detail above. I order that the landlords retain the security deposit of **\$550.00**, and I grant the landlords a monetary order under section 67 of the Act for the balance owed of **\$2,194.37** (\$2,744.37 - \$550.00).

In the absence of the tenant's attendance to the hearing scheduled in response to her application as well as the application by the landlords, the tenant's application is hereby dismissed in its entirety.

### **Conclusion**

I hereby issue an **order of possession** in favour of the landlords effective not later than **two (2) days** after service on the tenant. This Order must be served on the tenant. Should the tenant 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 landlords in the amount of **\$2,194.37**. Should it be necessary, this Order may be served on the tenant, 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: August 15, 2011**

---

Residential Tenancy Branch