

## **Decision**

**Dispute Codes:** CNR, ERP, RP, FF

### **Introduction**

This hearing was convened in response to an application by the tenant for cancellation of a notice to end tenancy for unpaid rent or utilities / 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 / and recovery of the filing fee. The tenant participated in the hearing and gave affirmed testimony.

Despite being served by way of registered mail with the application for dispute resolution and notice of hearing (the “hearing package”), the landlord did not appear. Evidence submitted by the tenant includes the Canada Post tracking number for the registered mail. The Canada Post website informs that the hearing package was “successfully delivered.”

### **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**

There is no written tenancy agreement in evidence for this tenancy, however, evidence includes an “addendum” to the tenancy agreement. Tenancy began in a previous unit owned by the landlord in November 2008. Tenancy began in the unit which is the subject of this dispute on February 1, 2009. Monthly rent of \$885.00 is payable in advance on the first day of each month, and a security deposit of \$442.50 was collected.

Arising from rent which the landlord considered was unpaid when due on July 1, 2011, the landlord issued a 10 day notice to end tenancy for unpaid rent dated July 25, 2011. The notice appears to have been served by way of posting on the tenant’s door on that same date. A copy of the notice was submitted into evidence. Subsequently, the tenant testified that by not later than July 30, 2011 he paid the full amount of rent for July, in addition to fees assessed by the landlord for the late payment of rent for each of the months of May, June and July in the amount of \$75.00 (3 x \$25.00).

In his application the tenant sets out a range of miscellaneous concerns which include, but are not limited to, the condition of the unit and the yard. Evidence submitted by the tenant includes several photographs. For the present time, the tenant has chosen not to seek the issuance of orders against the landlord to remedy what are arguably certain deficiencies in and around the rental property.

Additional concerns identified by the tenant include the landlord's assessment of a fee for allegedly late payment of rent. The tenant takes the position that there is an absence of any specific agreement around how rent will routinely be paid / collected each month. It appears that if the landlord does not come around to the unit to collect the envelope containing the cheque which is taped to the outside of the tenant's door when it is posted there, the landlord may consider that it is late. It is unclear whether the landlord expects the tenant to contact him when the envelope is posted to the door, or whether the landlord routinely attends the unit on the first day of each month to collect the rent.

The tenant also queried the landlord's responsibilities where it concerns the provision of curtains and/or window coverings.

### **Analysis**

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated July 25, 2011. Further to filing an application for dispute resolution on July 29, 2011, I find that the tenant paid the outstanding rent within 5 days of receiving the notice. Accordingly, the notice to end tenancy is hereby set aside, with the effect that the tenancy continues in full force and effect.

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) The attention of the parties is drawn to particular sections of the Act, as set out below.

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, and provides in part:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

A tenant has the option of applying for orders to be issued against the landlord, requiring that certain repairs be undertaken. A tenant also has the option of applying for permission to reduce rent for repairs, services or facilities agreed upon but not provided.

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 13 of the Act addresses **Requirements for tenancy agreements**. Section 7 of the Regulation speaks to **Non-refundable fees charged by landlord**, and provides in part:

7(1) A landlord may charge any of the following non-refundable fees:

- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1)(d) or (e) unless the tenancy agreement provides for that fee.

The tenant has the option of applying for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement, in the event the parties are

unable to resolve directly between them any dispute around how rent is paid and how it is determined when payment is late.

As to window coverings, they may or may not be included in the tenancy, and the provision of same may be specifically addressed in the written tenancy agreement.

Residential Tenancy Policy Guideline # 1 speaks to "Landlord & Tenant – Responsibilities for Residential Premises," and provides in part as follows:

If window coverings are provided at the beginning of the tenancy they must be clean and in a reasonable state of repair.

As the tenant has succeeded in having the notice to end tenancy set aside, I find that he has established entitlement to recovery of the \$50.00 filing fee. I hereby order that the tenant may withhold this amount from the next regular payment of monthly rent following receipt of this decision.

### **Conclusion**

The notice to end tenancy is hereby set aside, and the tenancy continues uninterrupted.

I hereby order that the tenant may withhold \$50.00 from the next regular payment of monthly rent in order to recover the filing fee for his application.

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 30, 2011

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Residential Tenancy Branch