

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended this hearing in the Burnaby Office of the Residential Tenancy Branch (RTB) and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on July 22, 2011. The tenant testified that he did not receive the 10 Day Notice until he received the landlord's application for dispute resolution in August 2011. The landlord said that no one witnessed him post the 10 Day Notice on the tenant's door. The tenant confirmed that he received a copy of the dispute resolution hearing package that the landlord sent to him by registered mail on August 15, 2011. I am satisfied that the landlord served the dispute resolution hearing package to the tenant in accordance with the *Act*.

The parties disputed whether the landlord sent the tenant all of his evidence package. The tenant confirmed receiving some of this information which the landlord said he sent to the tenant. I proceeded with this hearing because I found that the missing portions of evidence involved information regarding a bedbug problem and spraying information from a pest control company that had no bearing on the application before me.

The tenant had applied to cancel the landlord's 10 Day Notice by way of a separate application for dispute resolution (RTB File No. 779740) scheduled for October 6, 2011. The tenant's application included his own application for a monetary award from the landlord. These files were not joined and both parties wished to proceed with my consideration of the landlord's application at this hearing.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is

the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This one-year fixed term tenancy commenced on December 1, 2010. Monthly rent was set at \$750.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$375.00 security deposit paid on November 26, 2010.

The landlord testified that the tenant has not paid any rent for July, August or September 2011. The tenant testified that he has paid cash for rent for each of the three months in question. At the hearing, the landlord provided copies of receipts he issued to the tenant and others who paid rent for this tenancy prior to July 2011. The tenant said that the landlord has never provided any rent receipts to him and that his payment of rent only became contentious once he started complaining about bedbugs in his rental unit.

The tenant entered into written evidence a copy of an August 30, 2011 note signed by the landlord which read as follows:

*Dear Tenants*

*Thank you for your September 2011 rent, due on 1<sup>st</sup> September. Regards!*

*S*

The tenant claimed that this was a receipt for his cash payment of his September 2011 rent. The landlord claimed that this was his request that the tenant pay his September 2011 rent on time, which did not occur.

### Analysis

Pursuant to section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute. The tenant said that he was in the final stages of renting another rental unit for October 1, 2011. He said that he was committed to ending this tenancy by the end of September 2011 and would allow the landlord to keep his security deposit if he and the landlord could resolve the landlord's current application and the tenant's own application for dispute resolution scheduled to be heard on October 6, 2011.

Both parties agreed to resolve their respective applications for dispute resolution on the following terms:

1. The parties agreed that this tenancy will end by 1:00 p.m. on September 30, 2011 and the tenant will vacate the rental premises by that time and date.
2. Both parties agreed to withdraw their applications for monetary awards including the tenant's application for dispute resolution under RTB File No. 779740.
3. The tenant agreed to allow the landlord to retain his \$375.00 security deposit.
4. The parties confirmed that this agreement constitutes a final resolution of all matters in dispute between them arising out of this tenancy.

### Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the tenant does not vacate the rental premises in accordance with their agreement. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

To give effect to their settlement agreement, I also authorize the landlord to retain all of the tenant's security deposit.

As per their agreement, I have directed the scheduler of the RTB to cancel the October 6, 2011 hearing of the tenant's application for dispute resolution for RTB File No. 779740.

The parties will bear their costs of filing their respective applications for dispute resolution.

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*.