

## **DECISION**

Dispute Codes      MT, CNR, FF, OPR, MNR

### Introduction

This hearing dealt with applications from the landlords and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenants applied for:

- more time to make an application to cancel the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlords' 10 Day Notice pursuant to section 46; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The male tenant (the tenant) confirmed that he received the landlords' 10 Day Notice posted on his door on August 19, 2011. The tenant also confirmed that he received the landlords' subsequent 10 Day Notice for unpaid rent owing for September 2011 posted on his door on September 5, 2011. The tenant confirmed that he received a copy of the landlords' dispute resolution hearing package sent by the landlords by registered mail on September 14, 2011. The female landlord (the landlord) confirmed that she received a copy of both of the tenants' dispute resolution hearing packages sent by the tenants' then lawyer to the landlord. I am satisfied that the parties served one another with the above documents in accordance with the *Act*.

At the commencement of the hearing, the tenant advised that his grandmother was available as a witness and had oral testimony to provide regarding the furniture that was removed from the rental property by the landlords. As the landlord and her agent confirmed that they had removed furniture from this furnished rental property and secured it from the tenants in the garage, it was not necessary to hear this undisputed evidence from the tenant's grandmother.

Close to the end of this hearing and after all significant evidence had been heard, the tenant requested an adjournment so that he could be represented by legal counsel. Due to the very late nature of the tenant's request and the effect that an adjournment would have on the landlords' interests, I denied the tenant's request for an adjournment.

### Issues(s) to be Decided

Are the tenants entitled to an extension of time to submit their application for dispute resolution regarding the landlords' 10 Day Notice of August 19, 2011? If not, should this tenancy continue? If not, should the landlords be issued an Order of Possession? Are the landlords entitled to a monetary award for unpaid rent and utilities? Are the tenants entitled to recover their filing fee for their application from the landlords?

### Background and Evidence

This two-year fixed term tenancy commenced on August 6, 2011. According to the signed residential tenancy agreement, the tenants were to pay \$2,300.00 in monthly rent plus utilities for this furnished rental property. The written tenancy agreement required this payment to be made on the 6<sup>th</sup> of each month, in advance. The landlords continue to hold the tenants' \$1,150.00 security deposit paid on July 28, 2011.

The parties testified that the female landlord was still looking for alternative accommodations in late July 2011. There was an apparent oral agreement between the parties to allow the female landlord to remain in the upper level of the rental premises for part of August 2011 until she found a place to live. The landlord gave oral testimony, supported by emails she entered into written evidence from the tenants' lawyer at that time, that the landlords agreed to reduce the tenants' rent for August 2011 to \$1,200.00 plus \$100.00 for utilities. The tenants were living in the basement suite during this period and the reduction in rent reflected what appears to have been the oral agreement between the parties to allow the landlord to remain in the upper suite during August 2011.

The landlords applied for a monetary award of \$3,600.00, which comprised of \$1,200.00 in unpaid rent for August 2011, \$100.00 for unpaid utilities for that month, and \$2,300.00 in unpaid rent for September 2011.

### Analysis – Tenants' Application for an Extension of Time to File their Application for Dispute Resolution to Cancel the Landlords' 10 Day Notice issued on August 19, 2011

The standard Residential Tenancy Branch (RTB) form used by the landlords to issue the 10 Day Notice to the tenants advised the tenants that they had five days to pay the rent or utilities to the landlords or file an application for dispute resolution with the RTB. The tenants did not file their application for dispute resolution regarding the August 19, 2011 10 Day Notice until August 30, 2011. In accordance with section 90(c) of the Act, the landlords' 10 Day Notice was considered served to the tenants on the third day after it was posted on their door on August 19, 2011. The tenants then had five days after August 22, 2011 to file their application for dispute resolution with the RTB or pay their

rent. They did not do so until after the five day period expired. At the hearing, the only explanation provided by the tenant for the delay in filing the application for dispute resolution was that he was busy working during that period and was unable to file the application on time.

I find no basis for extending the time period for filing the tenants' application for dispute resolution. As such, I have denied the tenants' application to extend the time period for filing the tenants' application for dispute resolution beyond the time limit established under the *Act*.

#### Analysis – Order of Possession

Section 55(1) of the *Act* reads as follows:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession, and*

*(b) the director dismisses the tenant's application or upholds the landlord's notice.*

In addition to the landlord's oral request to obtain an Order of Possession on the basis of the August 19, 2011 at the hearing, the landlords also applied for an end to this tenancy based on their September 5, 2011 10 Day Notice. The tenants have not paid any portion of their rent for either August or September 2011.

I dismiss the tenants' application for dispute resolution regarding the landlords' 10 Day Notice issued on August 19, 2011. As such, I find that the tenants failed to pay the \$1,200.00 amount identified in the 10 Day Notice of August 19, 2011 within five days of being served with that Notice. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of this tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by August 29, 2011. As that has not occurred, I allow the landlords' oral request at the hearing to obtain an Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

Since the tenants' application to dispute the landlords' 10 Day Notice of August 19, 2011 has been dismissed and the tenancy has ended on that basis, there is no need to consider the tenants' application to cancel the subsequent 10 Day Notice issued by the landlords on September 5, 2011.

#### Analysis – Monetary Award

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the tenants did not pay any rent or utilities to the landlords for either August or September 2011.

I find that there was an oral agreement, confirmed in an email entered into written evidence by the landlord, that the rent owing for August 2011 was reduced from the amount shown on the residential tenancy agreement to \$1,200.00 for the reduced area that the tenants occupied during that month. I find that the landlords are entitled to a monetary award in the amount of \$1,200.00 for unpaid rent for August 2011.

Since the landlords did not provide any receipts showing the amount of utility bills they paid or demonstrating their losses for unpaid utilities, I dismiss the landlords' application for a monetary award for \$100.00 in unpaid utilities for August 2011 without leave to reapply.

During the hearing, the tenant testified that the landlords removed some of the furniture that was in this furnished rental property and locked it in the garage so that the tenants could not use this furniture. The parties agreed that this furniture was removed by the landlords from the upstairs portion of the rental property on August 31, 2011. The landlords' agent confirmed that he told the tenants that this furniture was being removed because the landlords were not pleased with the tenants and their failure to pay their rent. The landlords' agent confirmed that the landlords removed a three seat sofa, two one seat sofas, a dining room table and the dining room chairs. The tenant testified that the landlords also removed one of the beds from the rental property and placed it in the garage.

Based on the undisputed evidence presented by the parties at the hearing and the photographic evidence provided by the landlords, I find that the landlords did in fact contravene the terms of the signed residential tenancy agreement when the landlords removed furniture that was supposed to be included in the tenants' monthly rent for this furnished rental property. I find that this reduced the tenants' quiet enjoyment of the rental property that they had committed to rent and represented a significant loss of services and facilities that the landlords committed to provide as part of this tenancy. I find that the landlord arbitrarily took this action without an agreement from the tenants and without obtaining an order from the RTB to do so. As such, I reduce the amount of the monetary award issued to the landlord for September 2011 from the \$2,300.00 identified in the residential tenancy agreement to \$1,400.00. I choose this amount as I find that the lack of these furnishings from the upstairs portion of the rental property significantly reduced the tenants' ability to use that portion of the premises they had committed to rent. This furniture was previously located in the upper portion of the premises, the portion that the tenants were not allowed to live in as a result of their oral agreement to let the female landlord remain in the upper unit during much of August. I find that the removal of this furniture did not affect the tenants' use of the lower suite, which was rented for \$1,200.00 for August 2011. The tenants had more use of the rental property during September 2011 by which time the female landlord had vacated the upper portion of the rental property. However, I find that the landlords' unauthorized removal of major pieces of furniture greatly reduced the tenants' use of the upper floor for September 2011. I find that the added benefit that the tenants enjoyed for accessing the upper floor of the rental unit during September 2011 is limited to an increase of the overall rent for the rental property from the \$1,200.00 they were responsible for paying for August 2011 to \$1,400.00 for September 2011. I issue a monetary award in the landlords' favour in the amount of \$1,400.00 for unpaid rent for September 2011.

Although the landlords' application does not seek to retain the tenants' security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenants' security deposit plus interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the tenants were unsuccessful in their applications for dispute resolution, they bear the responsibility for the filing fees for their applications.

### Conclusion

I provide the landlords with a formal copy of an Order of Possession to take effect within 2 days of the landlords' service of this notice to the tenant(s). 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.

I issue a monetary Order in the landlords' favour in the following terms which allows the landlords to recover unpaid rent for August and September 2011 and allows the landlords to retain the tenants' security deposit in partial satisfaction of the monetary award issued.

<b>Item</b>	<b>Amount</b>
Unpaid August 2011 Rent	\$1,200.00
Unpaid September 2011 Rent	1,400.00
Less Security Deposit	-1,150.00
<b>Total Monetary Order</b>	<b>\$1,450.00</b>

The landlords are provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.