



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF, DRI, CNR, RP, RR

Introduction

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

- an Order of Possession pursuant to the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) 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 their filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order regarding a disputed additional rent increase pursuant to section 43; and
- authorization to recover her filing fee for this application from the landlord 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 tenant confirmed that she received the landlords' 10 Day Notice posted on her door on October 2, 2011. The tenant confirmed that she received a copy of the landlords' dispute resolution hearing package sent by the landlords by registered mail on October 12, 2011. The landlords confirmed receiving a copy of the tenant's original dispute resolution hearing package sent by registered mail on September 29, 2011 and the tenant's amended dispute resolution

hearing package sent by registered mail on October 3, 2011. The tenant's amended application for dispute resolution sent on October 3, 2011 added the tenant's application to cancel the landlords' 10 Day Notice issued on October 2, 2011. I am satisfied that the parties served the above documents to one another in accordance with the *Act*.

At the commencement of this hearing, the parties assured me that they had exchanged their written evidence, including photographs, with one another. During the course of the hearing, the landlords referred to their written evidence sent in response to written evidence they had received from the tenant. When the tenant said that she could not locate the landlords' rebuttal evidence, the landlords testified that they had only sent this evidence to the Residential Tenancy Branch and had not served a copy of this material to the tenant. Since this portion of the landlords' evidence had not been properly served to the tenant and the landlords wished to proceed with this hearing, the landlords said they were in agreement to proceed without my consideration of the rebuttal evidence in question. I have not considered their rebuttal evidence as it was not properly served to the tenant and left the tenant without an opportunity to address this portion of the case against her.

Issues(s) to be Decided

Should the tenant's application to cancel the landlords' 10 Day Notice be allowed? If not, are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Are the landlords entitled to a monetary award for loss arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Has the landlords' rent increase been issued in accordance with the *Act* and if not what should be the correct monthly rent for this tenancy? Is the tenant entitled to a monetary award for losses arising out of this tenancy or for a reduction in rent resulting from services or facilities or services agreed to but not provided by the landlords? Should an order be issued to the landlords requiring repairs to the rental property? Are either of the parties entitled to recover their filing fees for this application from the other party?

Background and Evidence

This tenancy began on or about August 1, 2002 by way of a one year fixed term tenancy agreement. After the expiration of the fixed term, this tenancy converted to a month-to-month tenancy. The original monthly rent was set at \$1,400.00, payable in advance on the first of each month. The landlords continue to hold the tenant's \$600.00 security deposit paid on or about August 1, 2002.

By early 2011, the monthly rent had increased to \$1,650.00. On April 30, 2011, the landlords attempted to increase the tenant's rent by \$50.00 to \$1,700.00, effective September 1, 2011. The tenant objected to this rate of increase, noting that it exceeded the allowed 2.3 % rent increase established in the *Regulation* to the *Act*. She also objected to the September 1, 2011 date selected by the landlords as she maintained that the earliest legal date when the landlords could obtain a rent increase was October 1, 2011.

The landlords completed a revised rent increase form on May 28, 2011 in which they were seeking a \$37.95 monthly increase in rent from \$1,650.00 to \$1,687.95 effective October 1, 2011. The female landlord testified that she sent this notice to the tenant by email. The tenant noted that the *Act* did not allow this method of providing notification of an annual rent increase. She said that as this notice varied from the previous notice, she asked the landlords to send her formal written notice of this proposed increase, which the landlords never provided.

Both parties applied for monetary awards of \$5,000.00. The landlords' application identified the following items in their claim:

Item	Amount
Unpaid October 2011 Rent	\$1,687.95
Lawyer's Fee	500.00
Bailiff's Fee	1,000.00
Miscellaneous Fees and Pet Damage Deposit	1,712.05
Filing Fees	100.00
Total Monetary Award Requested	\$5,000.00

The tenant outlined the following items in her claim for a monetary award:

Item	Amount
2002 Chimney & Flue Cleaning	\$129.35
2002 Furnace & Duct Cleaning	103.25
2002 Furnace Service	119.78
2003 Chimney Cleaning	107.50
2003 Installing Damper Chain	125.00
2005 Chimney Cleaning	128.29
2005 Backwall Repair (Downstairs FP)	150.00
2006 Furnace Cleaning	69.55
2006 Fence	1,994.00
2006 Fence	1,000.00

2006 Chimney Cleaning & Repairs	169.95
2007 Chimney Cleaning	89.95
2008 Chimney Cleaning	89.95
2009 Chimney Cleaning	94.95
2009 Furnace Repairs	116.86
2010 Deck Shoring	480.40
2011 Postage (\$24.53 + \$20.94 + \$19.47 = \$64.94)	64.94
Total of Monetary Award Items	\$5,033.72

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.

During this hearing, the parties reached an agreement to settle their dispute on the following terms.

1. The landlords' 10 Day Notice to End Tenancy for Unpaid Rent issued on October 2, 2011 will be cancelled with the effect that this tenancy will continue.
2. The parties agreed that the monthly rent for the duration of this tenancy will remain at \$1,650.00.
3. The tenant agreed to issue a cheque to the landlords in the amount of \$1,650.00 for rent for October 2011 before October 29, 2011. At that time, the tenant agreed to also provide post-dated cheques in the amount of \$1,650.00 for November 2011, December 2011 and January 2012.
4. The parties agreed that the monetary details of this agreement constitute a final and binding resolution of all monetary issues in dispute arising out of this tenancy at this time.
5. The parties agreed that this tenancy will end by 1:00 p.m. on February 1, 2012, by which time the tenant will have vacated the rental premises.
6. The parties confirmed that their agreement constituted a final and binding decision on all other aspects of the applications for dispute resolution that they have submitted arising from this tenancy.

These particulars comprise the full and final settlement of all aspects of these applications for both parties.

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 landlords in the event that the tenant does not vacate the rental premises by February 1, 2012 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.

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*.

Dated: October 28, 2011

Residential Tenancy Branch