



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MND, 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 pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, 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 tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants 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 female tenant (the tenant) confirmed that she and her husband, the male tenant, received the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) handed to the tenant on October 2, 2011. The tenant said that she received a copy of the landlord's dispute resolution hearing package when the landlord handed this to her on October 17, 2011. The landlord testified that she left two copies of this package with the female tenant. Based on the sworn testimony of the parties, I am satisfied that the female tenant received both the 10 Day Notice and the landlord's dispute resolution hearing package and that she could act on behalf of her husband, the male tenant, at this hearing.

Although I am satisfied that the 10 Day Notice was served to the male tenant in accordance with the *Act*, I am not satisfied that the landlord properly served the monetary portion of this application for dispute resolution to the male tenant in accordance with section 89(1) of the *Act*. As such, I find that any Order issued in the landlord's favour as a result of this application can only be directed to the female tenant.

At the hearing, the landlord confirmed that the only notice to end tenancy issued to the tenants was the 10 Day Notice. I have not considered the landlord's application to end this tenancy on the basis of an alleged breach of their tenancy agreement.

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 tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This one-year fixed term tenancy commencing on June 15, 2011 is scheduled to end on June 30, 2012. Monthly rent is set at \$900.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$450.00 security deposit paid in June 2011.

The landlord issued the 10 Day Notice to seek payment of \$1,190.00 in outstanding rent owing as of October 2, 2011. The parties agreed that the tenants have paid \$55.00 on or about October 19, 2011, \$200.00 on October 28, 2011, and payments of \$750.00 and \$450.00 on November 4, 2011. The parties agreed that the landlord issued at least one receipt for these payments noting that payment was received for use and occupancy only. The parties agreed that \$615.00 in rent remains owing at this time.

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.

Both parties agreed to resolve this dispute under the following terms:

1. The parties agreed that the tenants will pay the landlord \$665.00 by 5:00 p.m. on November 12, 2011 to resolve all outstanding financial matters presently arising out of this tenancy.
2. The parties agreed that if the tenants comply with the financial terms of this settlement agreement, the landlord will cancel the notice to end tenancy allowing this tenancy to continue.
3. The parties agreed that if the tenants do not comply with the financial terms of this settlement agreement, this tenancy will end by 1:00 p.m. on November 14, 2011, by which time the tenants will have vacated the rental premises.

Both parties agreed that this settlement constitutes a final resolution of the issues in dispute between them at this time.

Conclusion

If the tenants comply with the terms of this agreement, the notice to end tenancy is set aside and the tenancy will continue as per the above terms.

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 comply with the financial terms of 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.

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlord's favour in the amount of \$665.00 against the female tenant. I deliver this Order to the landlord in support of the above agreement for use in the event that the female tenant does not abide by the terms of the above settlement.

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: November 08, 2011

Residential Tenancy Branch