



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, RR, OPL, FF

Introduction

This hearing was convened in response to an application by the landlord **and** an application by the tenant.

The landlord filed pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order of Possession for Landlord's Use of Property - Section 55
2. An Order to recover the filing fee for this application - Section 72

The tenant filed pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. Allow tenant to reduce rent for repairs or services agreed upon – Section 65
2. A Monetary Order for compensation for loss - Section 67
3. An Order to recover the filing fee for this application - Section 72

Both parties appeared in the conference call hearing and participated with their submissions and sworn testimony. The tenant advised they are still residing in the rental unit but have determined to vacate in the future. Despite considerable disagreement in respect to whether a Notice to End for Landlord's Use was given to the tenant, at the outset of the hearing the parties turned their minds to compromise and determined to settle the issue of the continuation of the tenancy and that I record their agreement as a Record of Settlement on this matter, and provide the means to perfect the agreement.

The parties *did not* arrive at agreement on the tenant's claim for a monetary order for an abatement of rent in compensation for a lack of a service agreed upon but not provided (television signal feed - satellite dish service), and registered mailing costs from a previous dispute.

Issue(s) to be Decided

Is the tenant entitled to rent abatement for a service agreed upon but not provided? If so, in what amount?

Is the tenant entitled to the monetary amount(s) claimed?

Background and Evidence

This tenancy began a written tenancy agreement March 01, 201. Rent in the amount of \$550 is payable by the tenant in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$275. The tenant resides in the basement portion of the residential house. The landlord resides upstairs.

The testimony of the landlord and the tenant is that this tenancy has been the subject of a previous dispute resolution proceeding and to this date remains acrimonious and in dispute. Both parties provided conflicting document evidence and conflicting testimony.

The landlord's claim

The landlord's claim for an Order of Possession was addressed via mutual agreement to end the tenancy in the new year of 2012, and is articulated within this decision.

The tenant's claim

The tenant claims that the landlord failed to provide satellite television service as stipulated in the tenancy agreement (provided into evidence). The tenant claims that the landlord attempted on several occasions to provide a working satellite signal into the rental unit, but was not successful. The tenant claims they repeatedly reminded the landlord to provide the service, but the landlord has purportedly procrastinated in the matter. The tenant further testified that as a result, they sought their own television service from a local provider, at a cost to them. The tenant provided a portion of the provider's billing information showing a monthly charge for a variety of service items totalling \$60 per month – some are discounted, some are adjusted, some are free, some are ongoing and some are in excess of the basic service. In support of their claim, the tenant also provided a letter from their employer in respect to their employer's knowledge of the tenant's circumstances surrounding their television service. The landlord provided a conflicting view disputing the tenant's claims. They claim that they were successful in providing a signal to the tenant's television on a second attempt to connect the service, and that the tenant's television eventually displayed the satellite service signal. The tenant is claiming an abatement of rent representing the cost to them for providing their own television signal.

Analysis

During the course of the hearing, the parties reached an agreement to settle the status of the tenancy, and that I record their settlement and provide each party with the corresponding means to perfect their agreement. The parties agreed to the following conditions:

1. The parties agree that tenant will pay the landlord the outstanding rent owed to them for **November 2011**, forthwith.
2. The landlord and the tenant agree that the tenancy will continue **to January 31, 2012**, at which time the tenant agrees they will vacate the rental unit subject to an **Order of Possession** for the landlord, **and the tenancy will end.**
3. The landlord and tenant agree that there **will not be any rent payable** for the month of **January 2012.**

On preponderance of the evidence, and on the balance of probabilities, I prefer the tenant's evidence that they suffered a lack of a service to which the parties agreed by their tenancy agreement would be provided. The burden of proof and the onus to prove their claim rests with an applicant – in this matter the tenant – to establish the amount of compensation to which they should be entitled. The tenant has not provided clear evidence of her monetary claim for the television service, but has requested compensation of \$75 per month from the start of the tenancy. Given the evidence in this matter, and that the tenancy will end after eleven (11) months from its beginning, I grant the tenant a set nominal amount for *television service* in the sum of \$35 per month for 11 months, for a total award of **\$385.**

The Act does not allow me to grant the tenant costs associated with administering a claim for dispute resolution, other than the filing fee. As a result, the tenant's request for registered mails costs **is dismissed**, without leave to reapply.

As each party is entitled to recover their respective filing fee, I find the parties will be responsible for their respective filing fees.

Based on the parties' agreement I find that the landlord is to receive an **Order of Possession** effective on or before **January 31, 2012.**

It should be noted that the parties are responsible to administer the security deposit at the end of the tenancy as per the Act.

It should also be noted that if the tenant does not pay the rent owed within a reasonable time from the date of the hearing, the landlord is at liberty to give the tenant a 10 Day Notice to End the tenancy for unpaid rent.

Conclusion

The parties have come to an agreement on certain conditions and provisions governing the tenancy and the rent payable, to the end of the tenancy on **January 31, 2012**. The parties are bound by this agreement. The tenancy, for now, will continue.

I grant an Order of Possession to the landlord **effective January 31, 2012**. The tenant must be served with this Order of Possession. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I Order that the tenant may deduct their award of **\$385** from a future rent.

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