

## **Decision**

**Dispute Codes:** CNR, FF / MNR, MNSD, FF

### **Introduction**

This hearing was previously convened on November 4, 2011 in response to 2 applications: i) by the tenants for cancellation of a notice to end tenancy for unpaid rent / and recovery of the filing fee; ii) by the landlords for a monetary order as compensation for unpaid rent or utilities / retention of the security and pet damage deposits / and recovery of the filing fee. When the dispute resolution officer concluded that neither party had appeared at the hearing, by way of decision dated November 4, 2011 the applications were dismissed with leave to reapply.

Subsequently, the landlords filed an application for review consideration on the basis of an inability to attend the hearing. A review was granted and the decision of November 4, 2011 was suspended. Both parties attended this reconvened hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement

### **Background and Evidence**

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the original fixed term of tenancy was from September 1, 2010 to August 31, 2011. Thereafter, tenancy continued on a month-to-month basis. Rent of \$1,400.00 and a \$50.00 payment toward utilities was payable in advance on the first day of each month. A security deposit of \$700.00 and a pet damage deposit of \$700.00 were collected at the outset of tenancy, in addition to a \$75.00 deposit with respect to 2 garage door openers. A move-in condition inspection and report were not completed.

Ultimately, the tenants vacated the unit on or about October 24, 2011. A move-out condition inspection and report were not completed.

During the several weeks leading up to the end of tenancy the landlords issued 3 separate notices to end tenancy, in summary as follows:

2 month notice to end tenancy because the tenant does not qualify for subsidized rental unit, dated August 31, 2011. The date shown on the notice by when the tenants must

vacate the unit is October 31, 2011. Subsequently, the tenants filed an application to dispute the notice, and a hearing was scheduled for October 7, 2011 (file #779949). While the landlord was represented at the hearing, the tenants did not appear. In her decision the dispute resolution officer noted that the tenants had previously informed the Residential Tenancy Branch of their decision to withdraw their application, and of their intention to vacate the unit by October 31, 2011. In the result, the tenants' application was dismissed.

1 month notice to end tenancy for cause dated September 21, 2011. This notice was issued after the landlords informed the tenants on September 20, 2011 that they were "retracting the 2 month notice to end tenancy for landlord's use of property..." The date shown on the 1 month notice by when the tenants must vacate the unit is October 31, 2011, and the reason shown for its issuance is:

Tenant is repeatedly late paying rent

10 day notice to end tenancy for unpaid rent dated October 8, 2011. This notice arose from rent which the landlords claimed was unpaid when due on October 1, 2011. After payment of rent for September 2011, the tenants made no further payment toward rent and, as previously stated, they vacated the unit on or about October 24, 2011.

During the hearing the parties exchanged views on some of the circumstances surrounding what became a very complex dispute, and undertook to achieve a resolution. Matters discussed included, but were not necessarily limited to, the comparative condition of the unit at the beginning and end of tenancy.

## **Analysis**

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a resolution. Specifically, it was agreed as follows:

- that the landlords will pay the tenants \$775.00, and that a monetary order will be issued in favour of the tenants to this effect;
- that the above payment reflects a return of ½ the combined security and pet damage deposits ( $\$1,400.00 \div 2 = \$700.00$ ) in addition to the full garage door deposit of \$75.00;

- that the above payment will be by cheque made payable to both tenants;
- that the above cheque will be hand-delivered to the tenants' place of work by the landlords or their agent on Monday, December 5, 2011 at approximately 4:00 p.m. at which time, in exchange, the tenants will return the 2 garage door openers;
- that the above particulars comprise full and final settlement of all aspects of the dispute(s) arising from this tenancy for both parties, such that both parties undertake to file no further applications for dispute resolution in regard to any aspect of the subject tenancy.

As the parties achieved a mutually agreed upon settlement of the dispute, I hereby dismiss their respective applications to recover the \$50.00 filing fee.

Pursuant to section 82 of the Act which speaks to **Review of director's decision or order**, the decision dated November 4, 2011 is hereby set aside.

### **Conclusion**

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$775.00**. Should it be necessary, this order may be served on the landlords, filed in the Small Claims Court and enforced as an order 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*.

**DATE: December 2, 2011**

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**Residential Tenancy Branch**