



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF, OPR, MNR, MNSD,

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an end to this tenancy and an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent 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 his filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover their 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, to make submissions and to cross-examine one another. The tenants confirmed that they received the landlord's January 7, 2012 posting of his 10 Day Notice on their door. The landlord confirmed that he received a copy of the tenants' dispute resolution hearing package left in his mail slot on January 11, 2012. The tenants confirmed that they both received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on January 18, 2012. I am satisfied that the parties served these documents and their evidence packages to one another in accordance with the *Act*.

At the commencement of the hearing, the parties confirmed that Tenant JR vacated the main floor of the rental property by December 28, 2011. As Tenant KR remains in the lower floor of the rental property and the landlord is still seeking an end to this tenancy and an Order of Possession, I considered applications from both parties.

Issues(s) to be Decided

Should the tenants' application to cancel the 10 Day Notice be allowed? Should this tenancy be continued and, if not, is the landlord entitled to an Order of Possession for

unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Are either of the parties entitled to recover their filing fees from the other party?

Background and Evidence

This periodic tenancy for a two level rental home commenced on July 1, 2007. Monthly rent for the two floors of this tenancy is currently set at \$1,850.00, payable in advance on the first of each month. According to the terms of this tenancy, the tenants are responsible for heat and hydro. The parties confirmed that the tenants' gas connection, the heat source designed for this rental property, has been disconnected by the gas company for over one and one-half years. The landlord continues to hold the tenants' \$900.00 security deposit plus applicable interest, paid by the tenants on June 8, 2007.

The landlord applied for a monetary award of \$3,225.00 in unpaid rent. The parties confirmed that the only rent the landlord has received for this rental property from the tenants for January 2012 has been a \$475.00 payment by Tenant KR on December 29, 2011. The parties agreed that \$1,375.00 in rent remains owing for January 2012. The landlord's application for a monetary award of \$3,225.00 also included a monetary award of \$1,850.00 for loss of rent for February 2012.

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 settle all issues arising from their applications and this tenancy on the following terms:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on February 15, 2012, by which time the tenants will have vacated the rental premises and yielded vacant possession of the rental premises to the landlord.
2. Both parties agreed that all monetary issues arising out of this tenancy will be resolved by the tenants' payment of \$1,885.60 to the landlord. This sum includes \$1,375.00 for unpaid January 2012 rent, \$925.00 for rent owing from February 1, 2012 until February 15, 2012, \$450.00 for cleaning and repairs of damage to the

rental unit, and \$50.00 for the recovery of the landlord's filing fee for his application, less the retained value of the tenants' security deposit (i.e., \$914.40).

3. The tenants agreed to allow the landlord to retain the tenants' security deposit plus applicable interest as a means of assisting in the resolution of the monetary issues between the parties.
4. Both parties agreed that this settlement constituted a final and binding resolution of all issues arising from this tenancy.

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 landlord if the tenants do not vacate the rental premises by February 15, 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.

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 \$1,885.60. I deliver this Order to the landlord in support of the above agreement for use in the event that the tenants do not abide by the terms of the above settlement. The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant 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.

As per the parties' agreement, I allow the landlord to retain the tenants' security deposit plus applicable interest.

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: February 03, 2012

Residential Tenancy Branch