



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDC, FF, CNC, CNR, MNR, MNDC

Introduction

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

- an Order of Possession for cause pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) issued on February 2, 2012 pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (1 Month Notice) pursuant to section 47;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to discuss their applications with one another.

The tenant confirmed that the landlord's representative handed him the 10 Day Notice on February 3, 2012. The tenant confirmed that the landlords also gave him the 1 Month Notice on January 16, 2012. The tenant testified that on February 2, 2012, he received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on January 26, 2012. The landlord's female representative (the landlord) confirmed that the tenant handed the landlord's representatives a copy of his dispute resolution hearing package on January 23, 2012. The landlord also confirmed that the landlords received an amended copy of the tenant's application for dispute resolution, including his application to cancel the 10 Day Notice on February 3, 2012. I am satisfied that all of these documents were served to one another in accordance with the *Act*.

At the hearing, the landlord made an oral request for an end to this tenancy and an Order of Possession if the tenant's application to dismiss the 10 Day Notice were dismissed. The landlord also asked for an Order of Possession on the basis of the 1 Month Notice.

At the commencement of this hearing, the tenant gave oral testimony regarding his written request for an adjournment of this hearing to give him an opportunity to obtain information from two police files he had requested from the Acme Police Department through the *Freedom of Information and Protection of Privacy Act*. The landlord's representatives opposed this application for an adjournment as they considered any further delay would cause further disruption to tenants in the rest of this building. After hearing from both parties, I dismissed the tenant's request for an adjournment as I was not convinced that the information requested by the tenant would be relevant to the issues before me and the landlord's request to end this tenancy for unpaid rent. I proceeded to hear the oral and written evidence of the parties.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause? Are either of the parties entitled to a monetary award for losses arising out of this tenancy? Is the tenant entitled to a monetary award for the cost of emergency repairs? Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This one-year fixed term tenancy commencing on July 1, 2011 is scheduled to end on June 30, 2012. Monthly rent is set at \$770.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$385.00 security deposit paid on June 16, 2011.

The landlord issued a 10 Day Notice on January 2, 2012 in which the landlord was seeking \$770.00 in unpaid rent and a \$25.00 late fee, a total of \$795.00. The tenant entered into written evidence a copy of a \$770.00 receipt issued by the landlord's representative on January 1st, 2012.

The landlord issued a second 10 Day Notice on February 2, 2012, seeking the \$577.00 difference in the \$193.00 in rent paid by the tenant for February 2012 (plus a \$25.00 late fee) and the \$770.00 rent due for that month. The tenant said that he withheld \$577.00 from his February 2012 rent as the landlord had asked him for reimbursement of that amount for pest control spraying in his rental unit and the unit above him. At the

hearing, the landlord confirmed that the pest control company had sent an invoice to the landlord on December 28, 2011, and that the landlord had paid this bill on January 31, 2012.

In addition to the landlord's application and oral request to end this tenancy, the landlord applied for a monetary award of \$649.96, to recover the costs of pest control spraying and a \$25.00 late fee for unpaid rent.

The tenant applied for a monetary award of \$5,000.00, an amount that was to recover \$577.00 in emergency repairs (i.e., pest control spraying) and various other losses and damages he claimed plus costs. At the hearing, the tenant testified that he has not made any payment to the landlord for pest control spraying, nor has he incurred costs in paying for any other emergency repairs.

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 their dispute and their respective applications on the following terms:

1. The tenant agreed to pay the landlord \$627.00 by 5:00 p.m. on February 15, 2012.
2. Both parties agreed that the tenant will pay the landlord \$385.00 on March 1, 2012 for one half-month's rent for March 2012.
3. Both parties agreed that if the joint move-out condition inspection to be conducted at the end of this tenancy on March 15, 2012 reveals that the tenant is entitled to a return of all of his \$385.00 security deposit that the landlord will give the tenant a cheque in that amount on that date.
4. Both parties agreed that the above arrangements resolve all monetary issues between them arising out of this tenancy and their respective applications for dispute resolution.
5. The tenant agreed to do everything in his power to ensure that he and his guests do not interfere with the quiet enjoyment of the premises for other tenants in this rental building.
6. Both parties agreed that if the tenant abides by all of the terms of their agreement, this tenancy ends by 1:00 p.m. on March 15, 2012.

7. Both parties agreed that the tenancy ends within two days of the tenant's breach of any of the terms of their agreement.
8. Both parties agreed that the settlement between them constituted a final and binding resolution of all issues currently in dispute arising out of this tenancy.

Conclusion

The notices to end tenancy are 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 Orders of Possession to be used by the landlord only if the tenant does not vacate the rental premises 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 \$1,012.00. I deliver this Order to the landlord in support of the above agreement for use in the event that the 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: February 14, 2012

Residential Tenancy Branch