



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- an Order of Possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67;
- authorization to retain all or a portion of the tenant's 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 tenant pursuant to section 72.

The tenant applied for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy (the 10 Day Notice) pursuant to section 66; and
- cancellation of the landlord's 10 Day Notice pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant testified that he received the landlord's 10 Day Notice posted on his door on March 23, 2012. The landlord testified that on April 14, 2012, he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on March 30, 2012. The landlord testified that he sent the tenant a copy of his dispute resolution hearing package by registered mail on April 6, 2012. The tenant said that he has not yet received the landlord's dispute resolution hearing package. Both the tenant and landlord provided the Canada Post Tracking Numbers to confirm their mailings. In accordance with section 90 of the *Act*, the parties' respective dispute resolution hearing packages are deemed to have been served to the other party on the fifth day after their mailing. I am satisfied that all of the above-noted sets of documents were served in accordance with the *Act*.

Issues(s) to be Decided

Should the tenant be granted an extension of time to file his application to cancel the landlord's notice to end tenancy? Should the landlord's 10 Day Notice be cancelled? Is the landlord entitled to an Order of Possession for unpaid rent and utilities? Is the landlord entitled to a monetary award for unpaid rent and utilities? Is the landlord

entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy commenced on August 19, 2011. Monthly rent for a room in the basement of this rental property is set at \$375.00, payable in advance on the first of each month. The landlord claimed that the tenant was to pay for utilities in addition to his monthly rent; the tenant claimed that utilities were included in his monthly rent. No written tenancy agreement has been created for this tenancy. The tenant shares kitchen facilities with the other basement tenant who rents another room from the landlord. The landlord continues to hold the tenant's \$184.00 security deposit paid on August 19, 2011.

At the commencement of the hearing, the tenant testified that he was sick and unable to submit his application to cancel the 10 Day Notice within the 5 day period for doing so.

The landlord issued the 10 Day Notice because he claimed that the tenant has not paid rent for February or March 2012 or utilities that he claimed were the tenant's responsibilities as part of their tenancy agreement. He applied for a monetary award of \$1,473.00 which included \$375.00 in unpaid rent for each of February, March and April 2012 and unpaid utilities of \$348.00.

The tenant testified that he paid the landlord cash for his rent for both February and March 2012. He said that the landlord refused to issue him a receipt for his payments. The tenant testified that he has not paid his April 2012 rent. The tenant refused to pay the landlord's requested utility charge as the tenant maintained that this was a charge that was included in his oral tenancy agreement.

Although the landlord provided copies of receipts, none of these were issued for this tenancy. He denied having received any cash or other payments from the tenant for rent for February or March 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 resolve the issues between them including those outlined in their applications for dispute resolution under the following terms:

1. The tenant committed to pay \$375.00 to the landlord by a negotiable cheque or money order by 5:00 p.m. on April 27, 2012.
2. The tenant committed to pay his \$375.00 in monthly rent for May 2012 by a negotiable cheque or money order by 5:00 p.m. on May 1, 2012.
3. Both parties agreed that if the tenant complies with the financial terms of this settlement agreement, the landlord will cancel the 10 Day Notice to End Tenancy and withdraw his current application for dispute resolution with the effect that this tenancy will continue.
4. Both parties agreed that if the tenant does not comply with the financial terms of this settlement agreement, the tenancy will end by 1:00 p.m. on May 3, 2011, by which time the tenant will have vacated the rental unit.
5. The landlord agreed to issue rent receipts for any payments made by the tenant for the duration of this tenancy.
6. Both parties agreed that if the tenancy continues, the monthly rent is set at \$375.00, payable in advance on the first of each month.
7. The landlord agreed that he will provide 24 hours written notice to the tenant if he wishes to enter the room that the tenant has rented from the landlord.
8. Both parties agreed that the terms of this settlement as set out above constituted a final and binding resolution of all issues in dispute arising out of this tenancy at this time.

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 **only** if the tenant does not abide by the financial terms of this settlement agreement and 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 \$750.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenant does not abide by the financial 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 after a failure to comply with the terms of the above settlement agreement. 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.

In accordance with the settlement agreement of the parties, I set the monthly rent at \$375.00 (including utilities), payable in advance on the first of each month. I direct the landlord to issue rent receipts for all payments by the tenant. I direct the landlord to provide 24 hours written notice to the tenant if the landlord wishes to inspect or enter the room the tenant rents from the landlord.

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: April 19, 2012

Residential Tenancy Branch