



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit, site or property 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 the filing fee for this application from the tenant pursuant to section 72.

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 confirmed that he received the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on his door by the landlord on April 2, 2012. The tenant also confirmed having received previous 10 Day Notices from the landlord, including one posted on his door on March 2, 2012. The tenant also confirmed that he received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on April 12, 2012. I am satisfied that the landlord served these documents and the landlord's evidence package in accordance with the *Act*. The tenant submitted no written evidence.

At the hearing, the landlord asked for authorization to amend the landlord's corporate name to that which appears above as the Applicant. The tenant had no objection and I have amended the landlord's name as requested to that which appears above.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent and for damage arising out of this tenancy? 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 tenancy commenced initially as a one-year fixed term tenancy on June 1, 2005. After the expiration of the initial term, the tenancy converted to a periodic tenancy. The current monthly rent is set at \$638.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$282.50 security deposit paid on May 20, 2005.

The landlord's 10 Day Notice issued on March 2, 2012 identified \$1,718.00 in unpaid rent owing on March 1, 2012. The 10 Day Notice for April 2012 identified \$1,153.00 in outstanding rent. The parties agreed that the tenant provided a \$500.00 cheque to the landlord on April 26, 2012 to be applied towards the outstanding balance owing. The landlord gave undisputed testimony that previous cheques have proven non-negotiable and the landlord was uncertain if the April 26, 2012 cheque would clear.

The landlord's application for a monetary award of \$2,138.00 included rent that was outstanding on April 5, 2012 for part of March 2012 and April 2012, late fees, and estimates for painting, cleaning and carpet cleaning. The tenant did not dispute the landlord's claim that he was in rental arrears, but expressed a willingness to pay the outstanding amounts owing so that he could remain in this tenancy.

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 all issues in dispute at this time arising out of this tenancy under the following terms:

1. Both parties agreed that the tenant's payment of the following amounts to the landlord resolves all monetary issues with respect to this application and for rent due for May 2012:
 - a) the tenant agreed to pay the landlord \$1,203.00 by certified cheque or money order by 4:30 p.m. on May 17, 2012;
 - b) the tenant agreed to pay the landlord \$638.00 by certified cheque or money order by 4:30 p.m. on May 31, 2012.
2. Both parties agreed that if the tenant fulfills the monetary terms of this settlement agreement as set out above, the landlord would cancel the 10 Day Notice issued on April 2, 2012 and the tenancy will continue.

3. Both parties agreed that if the tenant does not fulfill the monetary terms of this settlement agreement as set out above, the tenancy ends by 1:00 p.m. on June 1, 2012 and the tenant will vacate the rental premises by that time and date.
4. Both parties agreed that this settlement agreement constituted a final and binding resolution of all issues 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 comply with the monetary terms of their agreement **and** fails to 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 \$1,841.00. 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 monetary 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.

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: May 01, 2012

Residential Tenancy Branch