



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, PSF, OPR, MNR, MNDC, 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 pursuant to section 55;
- a monetary order for unpaid rent and 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 the landlord's 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 (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to discuss the issues in dispute with one another. At the hearing, the tenant was assisted by his advocate as I was advised that the tenant has special needs which might present a challenge for him to present his position. Although the advocate's assistance was needed a few times during this hearing, for the most part the tenant was able to articulate his position effectively. He was certainly able to discuss the issues in dispute at this hearing and make decisions on his own behalf.

Shortly before the hearing, the landlord submitted written authorization to her agent to act on her behalf at this hearing. The landlord's agent confirmed at the hearing that he had full authority to act on the landlord's behalf. The agent noted that the tenant had incorrectly spelled the landlord's name in his application. With the agreement of the parties, I allowed the tenant to revise the spelling of the landlord's name to that which appears above.

The tenant confirmed that he received the landlord's 10 Day Notice posted on his door on May 2, 2012. The tenant testified that he placed a copy of his dispute resolution hearing package under the landlord's door on May 4, 2012, when the landlord did not answer her door. The tenant's advocate confirmed that she witnessed the tenant place this package under the landlord's door that day. The agent confirmed that the landlord received a copy of the tenant's dispute resolution hearing package deposited under the landlord's door on May 4, 2012. The tenant confirmed that he received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on May 9, 2012. I am satisfied that the parties served one another with the above documents.

During the course of the hearing, the agent admitted that his direct knowledge of the interactions between the tenant and the landlord that had given rise to the tenant's application was limited. Although the parties testified that they had sent their written evidence packages to one another, the agent referred at one point to evidence he understood had been sent to the tenant and the Residential Tenancy Branch (RTB) by courier in advance of the hearing. This evidence related to rent paid and received from the tenant for April 2012. Neither the tenant nor the RTB had received this written evidence. I noted that the only written evidence received from the landlord was the landlord's late submission of her letter authorizing the agent to act on her behalf, a copy of the 10 Day Notice, a Proof of Service document regarding the 10 Day Notice, and a photograph of the 10 Day Notice posted on the tenant's door. Since I was not satisfied that the additional written evidence referred to by the agent had been provided to either the tenant or the RTB, I advised the agent that I would not be considering this written evidence.

Issues(s) to be Decided

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 a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant? Should any orders be directed towards the landlord with respect to this tenancy, including the provision of services and facilities agreed to but not provided by the landlord?

Background and Evidence

Although the parties agreed that this tenancy commenced on April 4, 2012, they disagreed as to whether this was a periodic (month-to-month) or a fixed term tenancy. Initially, the tenant planned to live with two other tenants in this rental unit. However, the other two tenants were unable to continue in the tenancy and have left him as the sole occupant in the rental unit at this time. The tenant maintained that he and the other

tenants signed a one-year fixed term tenancy agreement. The tenant also testified that he has repeatedly requested a copy of the signed tenancy agreement and receipts for payment of rent, but the landlord has failed to provide him either of these items.

The parties agreed that monthly rent is set at \$1,200.00, payable in advance on the first of each month. Although the original tenancy agreement was to require a \$700.00 security deposit, the tenant testified that the landlord gave him oral permission to waive paying that deposit when the other two tenants failed to continue with their commitment to live in the rental unit. I observe that the *Act* prevents a landlord from charging more than one half month's rent for a security deposit.

The agent testified that the landlord issued the 10 Day Notice when the tenant paid only \$703.34 towards the \$1,200.00 monthly rent for April 2012. He testified that \$496.66 remains owing from this tenancy for April 2012. The landlord's 10 Day Notice identified \$2,500.00 as owing. Since the tenant only commenced on April 4, 2012 and the agent admitted that \$703.34 was paid towards the tenant's April 2012 rent, the accuracy of the \$2,500.00 identified as owing in the landlord's 10 Day Notice is in question. It would appear that the landlord included some combination of the unpaid security deposit and perhaps June 2012 rent in the 10 Day Notice issued on May 2, 2012. The agent did not dispute the tenant's claim that receipts had not been issued for the payments that he or the relevant provincial government ministry had paid on his behalf during this tenancy. The tenant and his advocate submitted that they had checked with the government ministry and confirmed that shelter allowances totalling \$1,200.00 had been paid for April 2012. They provided no written evidence to support their assertion regarding the payment of the April 2012 rent.

The tenant admitted that he had not paid any rent for May 2012. However, he claimed that he had attempted to pay his May rent a number of times, but the landlord had refused to accept his payments. He said that he was prepared to pay his May rent and would be able to pay his June 2012 rent.

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 engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute. The agent confirmed that he had the landlord's full authority to act in this matter and make commitments on behalf of the landlord with respect to this tenancy.

Both parties agreed to resolve all issues in dispute arising out of this tenancy on the following terms:

1. Both parties agreed that all monetary issues in dispute between them will be resolved by the tenant's payment of \$2,400.00 in rent owing as of June 1, 2012 by 5:00 p.m. on June 1, 2012.
2. Both parties agreed that if the tenant complies with the above monetary term of this settlement agreement, the landlord's 10 Day Notice is cancelled with the effect that this tenancy continues.
3. Both parties agreed that if the tenant does not comply with the above monetary term of this settlement agreement, the tenancy will end by 1:00 p.m. on June 3, 2012, by which time the tenant will have vacated the rental unit.
4. The landlord's agent agreed on the landlord's behalf to ensure that written rent receipts will be provided for every rental payment made during the remainder of this tenancy.
5. The landlord's agent agreed on the landlord's behalf to ensure that the tenant is provided with a copy of the signed residential tenancy agreement when the landlord (or the landlord's agent) receives the tenant's monetary payment on June 1, 2012.
6. The landlord's agent agreed on the landlord's behalf to provide the tenant with a key to the tenant's mailbox as soon as possible.
7. The landlord's agent agreed on the landlord's behalf to ensure that 24 hours written notice will be given by the landlord to the tenant in accordance with the *Act* for any entry into the rental premises by the landlord.
8. Both parties agreed that the above terms constituted a final and binding resolution of all issues in dispute at this time arising out of 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 **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 \$2,400.00. 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 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 30, 2012

Residential Tenancy Branch