



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, FF / CNR, CNC, MNDC, FF

Introduction

This hearing concerns 2 applications: i) by the landlord for an order of possession / a monetary order as compensation for unpaid rent / and recovery of the filing fee; ii) by the tenant for cancellation of a notice to end tenancy for unpaid rent / cancellation of a notice to end tenancy for cause / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee.

Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written residential tenancy agreement, a complete copy of which is not in evidence, the parties testified that the 6 month term of tenancy is from January 1 to June 30, 2012. Thereafter, the tenancy agreement provides that tenancy will continue on a month-to-month basis. A security deposit of \$425.00 was collected. As to rent, despite provisions in the tenancy agreement that monthly rent of \$850.00 is due and payable in advance on the first day of each month, and that "cash is not acceptable," and that rent must be paid by way of "post dated cheques," the parties departed from these provisions right from the start of tenancy. Specifically, cheques were not consistently post dated for the first day of each month and cash payment was variously received on different dates in payment for rent. Further, during what has been a relatively short tenancy, while more than a couple of notices to end tenancy have been issued, only two of these are specifically referred to here.

Arising from rent which the landlord claims was not paid when due on May 1, 2012, the landlord issued a 10 day notice to end tenancy for unpaid rent dated May 2, 2012. The notice was posted on the tenant's door on that same date. Subsequently, the tenant

argued that she had paid rent in cash and had deposited an envelope containing the cash in the landlord's mailbox. However, the landlord claims that no such envelope containing cash was found in the mailbox.

The landlord also issued a 1 month notice to end tenancy for cause dated May 3, 2012. Reasons shown on the notice for its issuance are as follows:

Tenant is repeatedly late paying rent

Tenant or a person permitted on the property by the tenant has:

significantly interfered with or unreasonably disturbed another occupant or the landlord.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve a resolution.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 63 of the Act addresses **Opportunity to settle dispute**, and provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion led to a resolution and it was specifically agreed as follows:

RECORD OF SETTLEMENT

- that the landlord withdraws the application for a monetary order as compensation for unpaid rent for May 2012;
- that the tenant will vacate the unit by no later than Saturday, June 30, 2012, and that an order of possession will be issued in favour of the landlord to that effect;
- that the tenant will pay the full amount of rent for June of \$850.00, which is due on June 1, 2012, and the landlord will immediately cash the post dated rent cheque already issued in this regard by the tenant;

- that should the post dated cheque for June's rent not clear, the landlord has the option of issuing a new 10 day notice to end tenancy for unpaid rent and then filing an application for dispute resolution, seeking a monetary order as compensation for unpaid rent for June, and an order of possession to be effective no later than two (2) days after service on the tenant;

As to the tenant's application to recover a service charge she claims was assessed against her by the bank in the amount of \$42.50, in light of conflicting testimony from the parties and in the absence of sufficient documentary evidence, this aspect of the application is hereby dismissed.

In regard to the applications to recover the filing fee, as the parties have resolved the principal matters of the dispute between them, both applications for recovery of the filing fee are hereby dismissed.

Concerning the disposition of the security deposit, the attention of the parties is directed to section 38 of the Act which speaks to **Return of security deposit and pet damage deposit**.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective no later than **1:00 p.m., Saturday, June 30, 2012**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Other aspects of the applications have variously been withdrawn, settled or dismissed, as set out above.

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: June 01, 2012.

Residential Tenancy Branch