



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, CNR, MNDC

Introduction

This hearing concerns the tenant's application for cancellation of two (2) different notices to end tenancy / and a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement. Both parties participated in the hearing and gave affirmed testimony.

During the hearing the landlord orally confirmed that an order of possession is sought in the event that the tenant's application to have the notices set aside does not succeed.

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 tenancy agreement, the initial term of tenancy was from September 1, 2011 to February 28, 2012. Thereafter, tenancy has continued on a month-to-month basis. Monthly rent of \$1,400.00 is payable in advance on the first day of each month, and a security deposit of \$700.00 was collected. There is conflicting testimony in regard to whether or not a pet damage deposit of \$500.00 was collected: the landlord claims that it was not, and the tenant claims that it was. A move-in condition inspection report was completed with the participation of both parties.

Pursuant to section 49 of the Act which speaks to **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice dated May 28, 2012. The tenant filed an application to dispute the notice on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is July 31, 2012, and the reason shown on the notice for its issuance is as follows:

All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

Subsequently, arising from rent which was unpaid when due on June 1, 2012, the landlord issued a 10 day notice to end tenancy for unpaid rent dated June 5, 2012. Testimony varied in relation to how the notice was served: the landlord claiming that it was served in-person on an individual residing with the tenant, and the tenant claiming that it was left at / on the front door to the unit. In any event, on June 7, 2012 the tenant amended the original application for dispute resolution by applying also to have the 10 day notice set aside. Following this, the tenant mailed his cheque payment for June rent, and the landlord confirmed receipt of this cheque on June 15, 2012. The landlord testified that she is prepared to permit the tenancy to continue no later than July 15, 2012, at which time she requests that an order of possession be made effective.

As to other aspects of the tenant's application, he seeks a monetary order in the total amount of \$2,000.00 as follows:

\$1,000.00: costs associated with constructing a shed on the rental property
\$700.00: costs for labour and materials for construction of a fence
\$300.00: costs for labour and materials to repair the back porch

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

For the purposes of determining the landlord's entitlement to an order of possession, I find that the 10 day notice to end tenancy for unpaid rent dated June 5, 2012, supersedes the 2 month notice to end tenancy for landlord's use of property dated May 28, 2012.

Based on the documentary evidence and testimony, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated June 5, 2012. On a balance of probabilities I find that this notice was served by being left at the front door to the unit. Section 90 of the Act which speaks to **When documents are considered to have been received**, provides that a notice served in this way is deemed to have been received three (3) days later, which in this case would be June 8, 2012. Pursuant to section 46(4) of the Act which addresses **Landlord's notice: non-payment of rent**, a tenant has five (5) days after receiving the notice to pay the overdue rent or file an application to dispute the notice. In this case, the tenant filed an application to dispute

the notice within the five (5) day period on July 7, 2012. However, the landlord did not receive cheque payment from the tenant for the overdue rent until June 15, 2012, which I find is outside of the five (5) day period. During the hearing the tenant presented no evidence that rent had been paid before five (5) days expired, no evidence that he had an order from a dispute resolution officer which gave him permission to withhold rent, and no evidence that he withheld rent with prior notice to the landlord for the cost of emergency repairs. In the result, I find that the landlord has established entitlement to an order of possession.

Section 55 of the Act speaks to **Order of possession for the landlord**, and provides in part as follows:

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

Pursuant to the landlord's oral request during the hearing, the order of possession is made effective July 15, 2012. Rent remains due and payable on July 1, 2012 for the period July 1-15, 2012.

Based on the documentary evidence which includes photographs, and the testimony of the parties, the remaining aspects of the tenant's application and my findings around each are set out below.

\$1,000.00: costs associated with constructing a shed on the rental property. There appears to be no dispute that the tenant constructed a shed on the rental property after the start of tenancy, and no dispute that the landlord did not object. However, there is no evidence that the landlord entered into any agreement to reimburse the tenant for any portion of the costs incurred for labour or materials. Neither is there any evidence that the landlord agreed to purchase the shed from the tenant. Accordingly, this aspect of the application is hereby dismissed.

\$700.00: costs for labour and materials for construction of a fence. Photographic evidence appears to show that a chicken wire fence was constructed in part, adjacent to a deteriorated wooden fence already in existence, and in part across a portion of the

yard where no other fence exists. It is understood that the tenant constructed the fence mainly to ensure that his dog remained in the yard. However, while there is no evidence that the landlord objected to the construction of this fence, neither is there any evidence that the landlord entered into any agreement with the tenant to reimburse him for related labour and materials, or to purchase the fence. In the result, this aspect of the application is hereby dismissed.

\$300.00: costs for labour and materials to repair the back porch. While there is no reference on the move-in condition inspection report to repairs required of the back porch, I note that the photographic evidence submitted by the tenant clearly shows what appears to be the relatively recent replacement of rotted wood. In the absence of any receipts, I find on a balance of probabilities that the tenant has established entitlement limited to **\$200.00***. I hereby order that the tenant may withhold this amount from the next regular payment of monthly rent.

In anticipation of the end of tenancy, the attention of the parties is drawn to section 38 of the Act which speaks to **Return of security deposit and pet damage deposit.**

Conclusion

I hereby order that the tenant may withhold **\$200.00** from the next regular payment of monthly rent.

I hereby issue an **order of possession** in favour of the landlord effective not later than **1:00 p.m., Sunday, July 15, 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 a order 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: June 18, 2012.

Residential Tenancy Branch