



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: CNR MNDC MNSD OLC FF
For the landlord: OPR MND MNR MNSD FF

Introduction

This cross-application hearing dealt with an application for dispute resolution under the *Residential Tenancy Act* (the “*Act*”) by the landlords and the tenants. The tenants applied under the *Act* to cancel a notice to end tenancy for unpaid rent; a monetary order or compensation for damage or loss under the *Act*, regulation or tenancy agreement; to return all or a part of a security deposit; and to recover the filing fee. The landlord applied under the *Act* for an order of possession for unpaid rent or utilities; a monetary order for damage to the unit, site or property, unpaid rent or utilities and to keep all or part of a security deposit; and to recover the filing fee.

The landlords, tenants and the advocates for the tenants appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlords, tenants and advocates for the tenants were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Both parties agree that they received the applications and evidence packages of the other party in accordance with the *Act*.

Preliminary and Procedural Matters

Both parties indicated several matters of dispute on their applications and confirmed that the main issue to deal with during this proceeding is to determine whether the tenancy will continue or end in accordance with the *Act*. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together. Therefore, I will consider the tenants’ application to request to set aside or cancel the Notice to End Tenancy and the landlords’ application for an order of possession. I dismiss the monetary portion of the applications from both parties with leave to reapply.

During the hearing, both parties referred to a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"). Pursuant to section 64 of the *Act*, the applications of the parties have been amended to include consideration of the 2 Month Notice.

Jurisdiction was also considered as the landlord indicated during the hearing that the landlords share a bathroom with the tenants. The tenants disputed the testimony of the landlords. When asked if the tenants have access to the landlords' bathroom and kitchen upstairs, the tenants responded that they did not. Furthermore, the landlords issued Notices pursuant to the *Act*. I do not accept the testimony of the landlords stating they share a bathroom with the tenants. I, therefore, find I have jurisdiction to resolve this dispute under the *Act*.

Issue(s) to be Decided

- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- Should the 2 Month Notice to End Tenancy for Landlord's Use of Property be cancelled?
- Should the landlord be granted an order of possession for unpaid rent or utilities; or for landlord's use of property?
- Should either party recover all or a portion of the filing fee?

Background and Evidence

The written tenancy agreement submitted as documentary evidence prior to the hearing indicates that the tenancy began on August 1, 2011. The initial six month fixed term tenancy reverted to a month to month tenancy on January 31, 2012. Rent was due on the first day of each month in the amount of \$500.00 for tenant RH and \$550.00 for tenant AR. Tenant RH paid \$250.00 as a security deposit at the start of the tenancy, and tenant AR paid \$275.00.

The tenants were served with a 10 Day Notice for Unpaid Rent in person on June 4, 2012 and applied for dispute resolution the following day, on June 5, 2012. The tenants testified that they did not pay rent for June 2012, as they are entitled to receive the equivalent of one month's rent from the landlord based on the 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice"), which the tenants stated they received on May 13, 2012. The 2 Month Notice was submitted as documentary

evidence prior to the hearing. The 2 Month Notice is dated May 1, 2012 and provides an effective date of June 30, 2012.

The tenants testified that they accepted the effective date on the 2 Month Notice and had planned to vacate by June 30, 2012 and did not pay the rent for June 2012 as they were entitled to receive the equivalent of one month's rent based on the 2 Month Notice. The landlords issued a 10 Day Notice due to the unpaid rent due June 1, 2012.

Landlord MT testified that his wife, landlord NT, was pressured to sign the 2 Month Notice. He stated that his wife signed the 2 Month Notice under "duress". Landlord MT stated that the tenants filled out the 2 Month Notice for landlord NT to sign, which the tenants dispute. The tenants testified that they were not served with the 2 Month Notice dated May 1, 2012 until May 13, 2012 and sought legal advice after receiving the 2 Month Notice.

Landlord NT testified during the hearing that she did not research the forms required to end a tenancy. A 1 month notice letter signed by landlord NT dated May 1, 2012, was submitted as documentary evidence by the tenants prior to the hearing indicating that the landlords wanted to renovate the entire suite. The tenants stated that this 1 month notice was not in accordance with the *Act*, so they requested a proper 2 Month Notice as required under the *Act*.

Landlord MT testified that he enters the rental unit to use the bathroom. The tenants disputed landlord MT's testimony that he enters the rental unit to use their bathroom, but did affirm that landlord MT does enter the rental unit without proper notice under the *Act*.

The landlords and tenants provided copies of letters and photos as evidence for this proceeding. Only the relevant evidence was considered in this Decision.

Analysis

Based on the documentary evidence and oral testimony of the parties and on a balance of probabilities, I find the following.

Section 68 of the *Act* states:

Director's orders: notice to end tenancy

68 (1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

(2) Without limiting section 62 (3) [*director's authority respecting dispute resolution proceedings*], the director may, in accordance with this Act,

- (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or
- (b) set aside or amend a notice given under this Act that does not comply with the Act.

I, therefore, correct the effective date on the 2 Month Notice to July 31, 2012 in accordance with section 68 of the *Act*.

Landlords' claim of duress – According to the Black's Law Dictionary, 6th Edition, "duress" is defined as:

"Any unlawful threat or coercion used by a person to induce another to act (or to refrain from acting) in a manner he or she otherwise would not (or would). Subjecting person to improper pressure which overcomes his will and coerces him to comply with demand to which he would not yield if acting as a free agent."

I reject the testimony of landlord MT claiming that his wife was forced under duress to sign the 2 Month Notice. I accept the tenants testimony that the 1 month notice letter from the landlords was not proper notice pursuant to the Act and that they requested a proper 2 Month Notice. Furthermore, if the landlords 1 Month Notice was part of this dispute and had not been replaced with a proper 2 Month Notice, the 1 Month Notice notice would have been cancelled as it did not comply with the *Act*.

Section 51(1) of the *Act* states:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

10 Day Notice for Unpaid Rent – As the tenants are entitled to receive from the landlords the equivalent of one month's rent, and had accepted the stated effective date on the 2 Month Notice of June 30, 2012, they are not required to pay rent for June 2012. Given the above, I cancel the landlords' 10 Day Notice for Unpaid Rent. The tenants will be required to pay full rent for July 2012, unless the tenants provide notice under section 50 of the Act, prior to the corrected effective date of the 2 Month Notice of July 31, 2012.

Order of Possession – I find that the landlords 2 Month Notice to be valid. As mentioned above, the effective date corrects under the *Act* to July 31, 2012. I, therefore, grant the landlords an order of possession based on the 2 Month Notice effective on **July 31, 2012 at 1:00 p.m.**

Landlord entering the rental unit – Based on the testimony of landlord MT and the tenants, I find that landlord MT has entered the rental unit without prior written notice as required by the *Act*. **I order the landlords not to enter the rental unit unless proper notice has been provided in writing in accordance with the Act, or until the tenancy has ended in accordance with the Act.**

Filing fees – As the tenants were partially successful in their application, I will award the tenants half of their filing fee for a total of **\$25.00**. As the landlords were partially successful in their application, I will award the landlords half of their filing fee for a total of \$25.00. Based on the above, I find that both monetary awards result in a zero balance to each party and, therefore, issue no monetary orders with respect to this Decision.

Conclusion

I dismiss the monetary applications of both parties with leave to reapply.

I cancel the landlords' 10 Day Notice for Unpaid Rent.

I find that the 2 Month Notice for Landlord's Use of Property is valid and grant an order of possession to be effective on **July 31, 2012 at 1:00 p.m.** This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

I find that both parties were partially successful in their applications and grant both parties \$25.00 in partial recovery of the filing fee, however, issue no monetary orders as the amounts result in a zero balance owed to each party.

I order the landlords not to enter the rental unit unless proper notice has been provided in writing in accordance with the *Act*, or until the tenancy has ended in accordance with the *Act*.

For the benefit of both parties, I have included *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 25, 2012

Residential Tenancy Branch