



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlords' 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 pursuant to section 67; and
- authorization to recover their 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.

Preliminary Service Issues

The female landlord, DJ, testified that the landlords handed the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on April 12, 2012. The tenant denied that the landlords handed her the 10 Day Notice. She testified that the earliest she heard of the landlords' attempt to end this tenancy for unpaid rent was on May 15, 2012 when one of the landlords handed her the landlords' dispute resolution hearing package which included a copy of the 10 Day Notice. The female landlord (the landlord) testified that she gave the tenant the dispute resolution hearing package on May 14, 2012.

On the day prior to the hearing, the Residential Tenancy Branch (RTB) received a copy of the 10 Day Notice and a handwritten 2 Month Notice to end this tenancy dated April 9, 2012 from the landlord. The tenant testified that she had not received the late evidence provided by the landlord. She acknowledged that she received the landlord's handwritten 2 Month Notice and signed for having received it on April 9, 2012. However, she correctly noted that the landlord's handwritten 2 Month Notice had no legal effect because it was not provided on an approved RTB form, required under the *Act*.

At the hearing, I noted that the 10 Day Notice entered as very late evidence by the landlords did not comply with the requirements of section 52 of the *Act*. Section 52 establishes the required form and content of a landlord's notice to end tenancy. I noted that section 52(a) of the *Act* requires that the notice to end tenancy be signed and dated

by the party giving the notice. In this case, the landlords identified only the last name of the tenant as the Respondent and the landlords neither signed nor printed their name at the bottom of the 10 Day Notice. I advised the parties that the 10 Day Notice entered into written evidence by the landlords did not appear to comply with section 52 of the *Act*. The landlords' agent (the agent) spoke with the female landlord and said that the female landlord had mistakenly sent the RTB an incomplete copy of the 10 Day Notice. The female landlord claimed to have a signed copy of the 10 Day Notice, a point refuted by the tenant.

I am satisfied that the landlords served their dispute resolution hearing package to the tenant in accordance with the *Act*.

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? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenant provided undisputed sworn testimony that her periodic tenancy with the previous landlord commenced on or about September 1, 2010. Monthly rent for this basement suite is set at \$600.00, payable on the first of each month. The tenant gave undisputed evidence that she paid a \$300.00 security deposit to the previous landlord on September 1, 2010.

The current landlords purchased this property and took possession of the property in April 2012. Shortly after they took possession they gave the tenant the handwritten 2 Month Notice requesting that she end her tenancy in two months, although no date to end this tenancy was identified in their notice.

The landlords claim to have issued their 10 Day Notice for unpaid rent of \$600.00 owing for April 2012. The tenant testified that she paid the previous landlord \$600.00 for her April 2012 rent on March 27, 2012. Although she did not enter any written evidence, she said that she had a receipt issued from the previous landlord to confirm that she paid her April 2012 rent. The tenant admitted that she had not paid anything towards her May 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.

Both parties agreed to resolve all issues arising out of this tenancy and the landlords' application under the following terms:

1. Both parties agreed that the tenant will pay the landlords \$1,200.00 by 5:00 p.m. on June 9, 2012.
2. Both parties agreed that if the tenant complies with the monetary terms of this settlement agreement, this tenancy will continue until June 30, 2012 at which time the tenancy ends and the tenant will have vacated the rental unit.
3. Both parties agreed that if the tenant does not comply with the monetary terms of this settlement agreement, this tenancy ends at 1:00 p.m. on June 11, 2012 and the tenant will vacate the rental unit by that time.
4. The landlords agreed to install a smoke alarm in this basement rental unit by June 4, 2012.
5. The tenant agreed to allow the landlords access to the rental unit in order to install the smoke alarm.
6. Both parties agreed that the tenant has paid a \$300.00 security deposit towards this tenancy and the landlords are responsible for returning this security deposit at the end of this tenancy subject to the provisions of the *Act*.
7. The tenant agreed that she will not smoke inside the rental unit.
8. The landlords agreed that they will ensure that any mail directed to the tenant while she remains in this tenancy will be provided to her.
9. Both parties agreed that this settlement agreement constituted a final and binding resolution of all issues in dispute 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 an Order of Possession to be used by the landlord **only** if the tenant 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 \$1,200.00. 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.

To give effect to the above terms of this settlement agreement, I order the landlords to install a smoke alarm in this rental unit by June 4, 2012. I also find that the landlords are responsible for the safekeeping of the tenant's \$300.00 security deposit paid on or about September 1, 2010. As noted at the hearing, no interest is payable on this security deposit since the security deposit was paid.

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