



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, CNR, OPR, OPC, OPB, LRE, MNDC, FF,

Introduction

This hearing dealt with an application by the landlord and two applications from the tenant under the *Residential Tenancy Act* (the *Act*). In Residential Tenancy Branch (RTB) File # A, the landlord applied for:

- an Order of Possession for unpaid rent, for cause, and for the breach of a material term of this tenancy pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

On July 25, 2012, the tenant applied for the following under RTB File # B:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) served on August 2, 2012 (pursuant to section 46);
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) served on July 31, 2012 (pursuant to section 47); and
- a monetary order of \$3,705.70 for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

On August 10, 2012, the tenant applied for the following under RTB File # B:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) served on July 23, 2012 (pursuant to section 47);
- authorization to change the locks to the rental unit pursuant to section 70; and
- authorization to recover his filing fee for this application from the landlord 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. The tenant confirmed the above spelling of his second name which I corrected on the landlord's application. Both parties agreed that the tenant has received all of the notices to end tenancy issued by the landlord. Both parties testified that they have received one another's dispute resolution hearing packages.

The landlord raised oral and written concerns regarding the timing of the tenant's service of his most dispute resolution hearing package for RTB File B. The tenant sent this application by registered mail on August 15, 2012. The landlord said that she

received this package on August 17, 2012. At the hearing, I asked the landlord if she was seeking an adjournment of the hearing to enable her more time to prepare for or respond to the tenant's application on RTB File B. After some discussion, the landlord testified that she preferred to proceed with the hearing and was not interested in obtaining an adjournment. I am satisfied that the parties served one another with the above documents and their written evidence packages and were prepared to proceed with a hearing of all three applications.

In their written and sworn testimony, both parties referenced the final and binding August 2, 2012 decision I issued on earlier applications from both the landlord and the tenant (RTB Files A and B). In that decision, among other determinations:

- I allowed the tenant's application to cancel the landlord's 10 Day Notice issued on June 30, 2012;
- I dismissed the landlord's application for a monetary award for unpaid rent alleged to be owing as of July 6, 2012 without leave to reapply;
- I ordered that the current monthly rent for this tenancy is \$875.00; and
- I allowed the tenant's application to recover his \$50.00 filing fee by reducing his next monthly rent payment by \$50.00.

As I noted at the August 23, 2012 hearing, my findings outlined in my August 2, 2012 decision are final and binding and are not ones that can be revisited.

At the hearing, the landlord made an oral request for an Order of Possession if the tenant's application to cancel the landlord's 2 Month Notice were dismissed.

Issues(s) to be Decided

Should the tenant's applications to cancel the landlord's notices to end tenancy be allowed? Should the landlord be issued an Order of Possession for unpaid rent? Are either of the parties entitled to a monetary award? Are either of the parties entitled to recover their filing fees for their applications?

Background and Evidence

This tenancy originally commenced on March 1, 2007 as a one-year fixed term tenancy. In a series of fixed term tenancy agreements, the tenancy continued. The most recent fixed term tenancy was a 15-month tenancy commencing on March 1, 2011. Monthly rent for this period was set at \$850.00, payable in advance on the 30th of each month, plus heat and hydro. The landlord continues to hold the tenant's \$437.50 security deposit and \$437.50 pet damage deposit paid on March 1, 2010.

In the context of determining the issues before me with respect to the parties' previous applications for dispute resolution, I made a finding that the tenancy had converted to a periodic tenancy. As noted above, I also determined that the correct current monthly rent is \$875.00.

As set out in the his written evidence, the tenant's application for a monetary award of \$3,705.70 included the following:

Item	Amount
Carpentry to Complete Garage Structure	\$504.00
Dumping Fees	72.00
Repair of Sliding Screen Door	67.20
Rent Reduction for Denial of Access/Services for 10 Months	875.00
Denial of Reasonable and Quiet Enjoyment of Premises for 10 Months	2,187.50
Total of Tenant's Requested Monetary Award	\$3,705.70

The landlord's application for a monetary award of \$875.00 was for the recovery of unpaid rent for August 2012. At the hearing, the landlord revised the amount of her requested monetary award to \$825.00 for August, the amount owing for that month as a result of my August 2, 2012 decision. The tenant confirmed that he has not paid any portion of his August 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 discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to resolve all outstanding issues arising of their applications in dispute at this time under the following terms:

1. Both parties agreed that all monetary issues arising out of their applications for dispute resolution, with the exception of the return of the tenant's security and pet damage deposits, are to be resolved by the tenant's agreement to pay \$1,700.00 to the landlord by 5:00 p.m. on August 31, 2012.
2. The landlord agreed to issue the tenant a written receipt for the acceptance of the tenant's \$1,700.00 payment outlined above for use and occupancy only.

3. Both parties agreed that if the tenant abides by his commitment to pay the landlord \$1,700.00 by August 31, 2012, this tenancy will end by 1:00 p.m. on September 30, 2012, by which time the tenant will have vacated the rental unit.
4. Both parties agreed that the landlord's return of the tenant's pet damage and security deposits remain subject to the provisions of the *Act* with respect to the return of those deposits, and that if the tenant returns the premises to the landlord in the same condition as when the tenancy commenced (minus reasonable wear and tear), the landlord will return these deposits to the tenant in accordance with the *Act*.
5. The tenant agreed to repair a damaged screen door in the rental unit by the end of this tenancy.
6. The tenant agreed to remove all of his belongings and debris from the rental property by the end of this tenancy.
7. The tenant agreed to leave the rental unit in the same condition as it was in when he first occupied the rental unit minus reasonable wear and tear.
8. The tenant agreed to professionally clean the carpets in the rental unit again before he ends this tenancy as per the terms of their residential tenancy agreement.
9. The landlord agreed to allow the tenant's pet dog to remain buried on the rental property.
10. Both parties agreed that they recognize that this tenancy ends on the basis of their mutual agreement to end this tenancy as outlined in this settlement agreement and **not** on the basis of any of the notices to end tenancy issued by the landlord (e.g., the landlord's 2 Month Notice).
11. Both parties agreed that this settlement agreement constituted a final and binding resolution of all issues in dispute at this time arising out of this tenancy and their respective applications for dispute resolution, and that neither party will initiate a further application for dispute resolution with respect to any of the 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 \$1,700.00. 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: August 23, 2012

Residential Tenancy Branch