



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF, CNR

Introduction

This hearing dealt with applications from the landlords and the tenant pursuant to the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46 (by way of his application regarding RTB File 796742); and
- a monetary order for compensation of \$2,500.00 for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67 (by way of his application regarding RTB File 797352).

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 received the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by August 23, 2012, the date that he applied to cancel that Notice.

Landlord JT (the landlord) confirmed that he had received a copy of the tenant's two dispute resolution hearing packages by registered mail on August 27, 2012. The landlord testified that he sent a copy of the landlords' dispute resolution hearing package to the tenant by registered mail on August 29, 2012. He entered into written evidence a copy of the Canada Post Tracking Number and envelope confirming this mailing. The tenant testified that he had not received the landlord's dispute resolution hearing package. The landlord testified that he had recently received that package returned to him as unclaimed. In accordance with sections 89 and 90 of the *Act*, the landlords' dispute resolution hearing package was deemed received by the tenant on the fifth day after its mailing, September 4, 2012. I am satisfied that the parties have

served one another with their dispute resolution hearing packages in accordance with the *Act*.

Both parties confirmed the spelling of their respective names as set out above and revised their applications to reflect minor changes from their original applications. The tenant's application did not include Landlord EOC as respondents in his application, so any monetary remedy he was seeking could only be directed to the two landlords he cited in his applications (i.e., JT and HT).

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the tenant entitled to a monetary award for losses arising out of this tenancy? Are the landlords entitled to recover the filing fee for their application from the tenant?

Background and Evidence

This tenancy commenced by way of a one-year tenancy agreement commencing on May 10, 2012 that was to expire on May 15, 2012. Monthly rent is set at \$1,250.00 payable in advance on the first of each month. The landlords continue to hold the tenant's \$625.00 security deposit paid on May 10, 2012.

Both parties made reference to an early arrangement that they had whereby the landlords would receive additional payments towards a possible rent to own agreement that they had that was separate from the residential tenancy agreement. They did not provide copies of any agreement that they had separate from a partial copy of the residential tenancy agreement entered into evidence by the landlords. At the hearing, they both confirmed that they had a residential tenancy agreement that formed the basis for the applications for dispute resolution submitted by both parties.

At the hearing, the tenant testified that he has already moved from the rental unit, although some of his belongings remain there. He said that he will be completing his move and vacating the rental unit by the end of the day on Sunday, September 30, 2012. He testified that he would text the landlord late in the day on September 30 to confirm that he has left his key and parking remote in the rental unit after he has vacated the premises. The landlord found this acceptable.

The landlords' application for a monetary award of \$2,500.00 was for outstanding rent owing for August and September 2012.

The tenant's application for a monetary award of \$2,500.00 was for his loss of quiet enjoyment during a lengthy construction process in the building where the rental unit is located and for the landlord's interaction with him over the latter portions of his tenancy. In this regard, the landlord testified that the tenant was well aware that there would be a lengthy period of construction in this building when he agreed to rent the premises. The tenant did not dispute the landlord's assertion that the tenant had never provided anything in writing to alert the landlords that he was unhappy with the noise level during this construction activity.

Analysis

Although the landlord said that he was hoping to receive an earlier end to this tenancy, given the date of this hearing, any 2-day Order of Possession I were to issue would not enable the landlord to obtain possession of the premises earlier than the morning of October 1, 2012. As such and with the agreement of the parties, I advised the parties that I would be issuing an Order of Possession to take effect on Monday, October 1, 2012. The tenant said that he did not need until 1:00 p.m. to vacate the premises as all of his belongings would be gone before 7:00 a.m. that day. As such, the landlord is provided with a formal copy of an Order of Possession effective at 7:00 a.m. on October 1, 2012.

Turning to the monetary aspects of this dispute, I find undisputed evidence that the tenant has not paid his August or September 2012 rent and had no authorization to withhold any portion of that rent. I issue a monetary award in the landlord's favour in the amount of \$2,500.00 to reflect the tenant's failure to pay rent for those months.

At the hearing, the landlords did not dispute that the tenant had made one \$500.00 payment to them on July 15, 2012 that was over and above the monthly payments required by their residential tenancy agreement. Although Landlord JT testified that the terms of their rent to purchase agreement established that this was a non-refundable payment, he did not enter into written evidence any such provision of a written agreement between the parties. In the absence of any written evidence from the landlords with respect to other contractual obligations that the tenant had with the landlords, I find that the landlords have not provided sufficient evidence to demonstrate that this \$500.00 payment was in fact separate from the tenant's rental obligations. As such, I find that the tenant is to be credited with this \$500.00 payment towards his outstanding rent.

I dismiss the remainder of the tenant's application for a monetary award without leave to reapply as I find that the tenant provided very little evidence to support his claim that he was entitled to any other form of rent reduction during his tenancy. He admitted that he

had no legal authority to withhold his rent, nor had he provided anything in writing to the landlord objecting to any of the issues that he identified in his request for a monetary award.

Although the landlords' application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

The landlords are provided with a formal copy of an Order of Possession effective by 7:00 a.m. on October 1, 2012. 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.

I issue a monetary Order in the landlords' favour under the following terms which allows the landlords to recover unpaid rent and their filing fee for this application, less the amount of the tenant's July 15, 2012 payment, and to retain the tenant's security deposit:

Item	Amount
Unpaid August 2012 Rent	\$1,250.00
Unpaid September 2012 Rent	1,250.00
Less Tenant's Payment of July 15, 2012	-500.00
Less Security Deposit	-625.00
Recovery of Filing Fee for Landlords' Application	50.00
Total Monetary Order	\$1,425.00

The landlords are provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. 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: September 28, 2012

Residential Tenancy Branch

