



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OP, MNR, FF

Introduction

This hearing concerns the landlord's application for an order of possession / a monetary order as compensation for unpaid rent or utilities / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, what ultimately became a month-to-month tenancy began on September 1, 2009. It is understood that monthly rent is presently \$980.00. Rent is due and payable on the first day of each month, and a security deposit of \$475.00 was collected.

The landlord issued a 1 month notice to end tenancy for cause dated July 27, 2012. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is August 31, 2012, and there are several reasons identified on the notice in support of its issuance.

Thereafter, on August 12, 2012 the parties signed a "Mutual Agreement to End a Tenancy" form. The date shown on the form by when tenancy will end is October 1, 2012. The parties undertook to agree that the "Mutual Agreement to End a Tenancy" form would replace the 1 month notice to end tenancy for cause. However, the tenant has not vacated the unit and claims in his written submission that the "Mutual Agreement to End a Tenancy" form was "signed under extreme duress and false pretenses."

During the hearing the landlord confirmed that he continues to seek an order of possession on the basis of the "Mutual Agreement to End a Tenancy" form, in addition

to recovery of the filing fee. However, the landlord presently withdrew his application to recover \$300.00 he claims is owed by the tenant for utilities, preferring instead to include it in a future claim for more extensive compensation from the tenant.

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

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

55(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(d) the landlord and tenant have agreed in writing that the tenancy is ended.

Based on the documentary evidence and testimony, I find that on August 12, 2012 the parties both signed a “Mutual Agreement to End a Tenancy” form, pursuant to which it was agreed that tenancy would end on October 1, 2012. I find that there is insufficient evidence that the tenant signed the form under “extreme duress and false pretenses.” In the result, as the tenant has not vacated the unit I find that the landlord has established entitlement to an order of possession.

As the landlord has succeeded in his application, I find that he has also established entitlement to recovery of the \$50.00 filing fee. I hereby order that the landlord may withhold this amount from the tenant’s security deposit.

The aspect of the landlord’s application concerning allegedly unpaid utilities in the amount of \$300.00, is hereby dismissed with leave to reapply.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. 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 an order of that Court.

I hereby order that the landlord may recover the \$50.00 filing fee by way of withholding that amount from the tenant's security deposit.

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: October 03, 2012.

Residential Tenancy Branch