



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF, CNR, RP

Introduction

This hearing dealt with applications from both the landlords and the tenants under 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;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an order to the landlords to make repairs to the rental unit pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to discuss the options available to them with one another. The tenant who attended the hearing (the tenant) confirmed that the tenants received the landlords' 10 Day Notice handed to them by one of the landlords' representatives (SM) on September 21, 2012. I am satisfied that the landlord served the 10 Day Notice in accordance with the *Act*.

The landlord confirmed that they received a copy of the tenants' dispute resolution hearing package when it was handed to one of the landlords on September 28, 2012. Landlord representative SA testified that she sent copies of the landlords' dispute resolution hearing package to all three tenants by registered mail on October 6, 2012. The landlords provided written evidence of the Canada Post Tracking Number and Customer Receipts to confirm these registered mailings. Although the tenant claimed that the tenants could not obtain these dispute resolution hearing packages because the landlord had not provided them with keys to the mail room, the tenant confirmed that DA did receive a hearing package handed to him on October 11, 2012. The tenant confirmed that she and her daughter, the other tenant, were aware of the landlords'

application for dispute resolution and had reviewed a copy of the landlords' dispute resolution hearing package. I am satisfied that the parties have been served with their respective hearing packages and were prepared to proceed with this hearing.

At the hearing, Landlord's representative SA reduced the amount of the monetary award sought by the landlords from \$2,112.36 to \$1,859.38, to reflect additional payments received from the Ministry of Social Development (the Ministry) on the tenants' behalf. She also testified that the landlords had submitted an amended application for dispute resolution in which the spelling of the names of the applicants were revised to reflect those outlined above. Neither the tenant nor the tenant's legal advocate objected to changing the tenants' names to those correctly outlined above. I have made these changes accordingly.

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 and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants? Should an order be issued to the landlords to conduct repairs to the rental unit?

Background and Evidence

This periodic tenancy commenced by way of an oral agreement that allowed the tenants to begin occupying the rental unit on September 9, 2012. Monthly rent is set at \$950.00, payable in advance on the first of each month. The landlords continue to hold the tenants' \$475.00 security deposit paid on September 5, 2012 and September 12, 2012.

The landlords issued the 10 Day Notice for \$656.00 in unpaid rent owing as of September 21, 2012. The tenants did not apply for dispute resolution within 5 days of receiving the 10 Day Notice, nor did they pay all of the amount then identified as owing within 5 days of receiving that Notice. The tenants did not apply for an extension of time to file for dispute resolution.

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 a resolution of the issues in dispute between them under the following terms:

1. Both parties agreed that this tenancy has ended and that the landlord is entitled to an Order of Possession.
2. Both landlords agreed that the landlords will delay taking any action with respect to serving the Order of Possession issued to the tenants until at least November 8, 2012.
3. The landlords agreed to delay enforcing the Order of Possession for this tenancy to enable the tenants to remain in occupancy of the rental unit until November 30, 2012 if the tenants' October and November 2012 rent for this rental unit is paid for use and occupancy only by November 8, 2012.
4. The tenant agreed to contact the Ministry of Social Development to arrange for the release of shelter allowance cheques to the landlords for October and November 2012.
5. Landlords' representative SM committed to contact the Ministry of Social Development to confirm that the tenants will be allowed to remain in occupancy of the rental unit for November 2012 if rental payments for October and November 2012 are paid by November 8, 2012.
6. The tenant agreed on behalf of herself and the other tenants to arrange for the payment of \$950.00 for October 2012 and \$950.00 for November 2012 to the landlords by November 8, 2012.
7. Both parties agreed that the terms of 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 the attached Order of Possession to be used by the landlord **only** if the tenants do not comply with the monetary terms of their agreement **and** fail to vacate the rental premises in accordance with their agreement. As the landlords committed to not take action to obtain vacant possession of the rental unit until at least November 8, 2012, I issue an Order of Possession that would take effect by 5:00 p.m. on November 8, 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.

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlords' favour in the amount of \$1,900.00. I deliver this Order

to the landlords in support of the above agreement for use **only** in the event that the tenants do not abide by the terms of the above settlement. This amount results from rent that would be owing for October and November 2012 in the event that the tenants do not pay the rent owed for October and November 2012. The landlords are provided with these Orders in the above terms and the tenant(s) 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(s) 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.

The return of the tenants' security deposit awaits a final determination as to the condition of the rental unit at the end of this tenancy. Both parties are at liberty to apply for a monetary award for the return of the security deposit after the tenants vacate the rental unit.

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: November 01, 2012

Residential Tenancy Branch

