



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, CNC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

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 that the landlord's general manager (the landlord) handed the tenant the 1 Month Notice on January 15, 2013. The landlord confirmed that the tenant handed him a copy of the tenant's dispute resolution hearing packages for his applications on November 2, 2012 and January 16, 2013, respectively. I am satisfied that the above documents were served to one another in accordance with the *Act*, as was the landlord's written evidence, the only written evidence provided for this hearing.

The tenant stated that he had hoped to be represented at this hearing by an individual who had fallen ill and was unable to help him prepare for or participate in this teleconference hearing.

The landlord asked for an Order of Possession if the tenant's application to cancel the 1 Month Notice were dismissed.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to a monetary award for the loss of value of his tenancy?

Background and Evidence

This periodic tenancy commenced on December 1, 2008. Monthly rent is currently set at \$450.00 (including cable), payable in advance on the first of each month. The

landlord continues to hold the tenant's \$200.00 security deposit paid on November 17, 2008.

The landlord issued the 1 Month Notice on the basis of a pattern of repeated late payment of rent. The landlord entered undisputed oral and written evidence that the tenant has been late paying his rent on five separate occasions since December 2011 (i.e., December 2011, January 2012, May 2012, June 2012 and January 2013). The tenant applied to cancel the 1 Month Notice.

On October 31, 2012, the tenant applied for a monetary award of \$900.00, an amount intended to compensate him for his loss of enjoyment of his tenancy. The tenant claimed that the landlord had conducted pest control spraying on 10 occasions during his tenancy. The landlord entered undisputed written evidence that these pest control treatments occurred in response to the tenant's concerns about the presence of cockroaches in his rental unit. Although the tenant testified that his rental unit now appears to be rid of pests, the tenant said that he was unable to use his kitchen for a two week period due to the delays in having the pest control treatment undertaken.

Analysis – Tenant's Application to Cancel the 1 Month Notice (RTB File 803531)

Pursuant to section 63 of the *Act*, the Arbitrator 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 settle the tenant's application to cancel the 1 Month Notice under the following final and binding terms:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on March 31, 2013, by which time the tenant will have vacated the rental unit.
2. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenant's application to cancel the 1 Month Notice.

Analysis – Tenant's Application for a Monetary Award (RTB File 801306)

At the hearing, the parties also discussed with one another the possibility of resolving the tenant's application for a monetary award. They were unable to reach a settlement agreement with respect to the tenant's application for a monetary award.

Based on the evidence before me, I find that there is undisputed evidence that there have been an unusual number of pesticide treatments required for this tenancy. However, I agree with the landlord's undisputed written submission that these

treatments were in direct response to the tenant's requests for action. The tenant did not submit sufficient evidence to demonstrate that the landlord ignored or was responsible for delays in attending to his requests for pesticide treatment. Although the tenant testified that he could provide witnesses who would confirm the disruption caused by the landlord's repeated spraying of his rental unit and photographs to confirm the extent of disruption caused, he provided neither. During the hearing, the tenant changed his testimony as to when his kitchen was unavailable for a two-week period due to the landlord's spraying of his premises. At one point, the tenant said that this two-week period occurred in November or December 2012 (and after he had applied for a monetary award for this disruption). Later, the tenant corrected this testimony when he stated that this likely occurred in August or September 2012.

Although I have given the tenant's application careful consideration, I find that he has not met the burden of proof required for demonstrating his entitlement to a monetary award for loss in the value of his tenancy. I also do not accept that any loss of enjoyment of the tenant's rental premises resulted from actions or omissions of the landlord. For these reasons, I dismiss the tenant's application for a monetary award without leave to reapply.

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 if the tenant does not vacate the rental premises by 1:00 p.m. on March 31, 2013 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.

I dismiss the tenant's application for a monetary award without leave to reapply.

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: January 30, 2013

Residential Tenancy Branch

