



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RPP, AAT, OPR, MNR, FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- an order requiring the landlord to return the tenant's personal property pursuant to section 65.

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 their applications with one another. The tenant confirmed that the landlord handed him the 10 Day Notice seeking a payment of \$240.00 in rent claimed to be owing on October 27, 2013. The landlord confirmed that the tenant handed him a copy of the tenant's dispute resolution hearing package at approximately 9:30 p.m. on November 2, 2013. I find that the above documents were served to one another in accordance with the *Act*.

The landlord testified that he attended the rental property on December 4, 2013, for the purpose of handing the tenant a copy of the landlord's dispute resolution hearing package. He said that he knocked on the tenant's door, but received no answer. As the door was open by three or four inches, he entered the tenant's room while the tenant was sleeping and handed the tenant the dispute resolution hearing package, including copies of his written evidence, at 2:30 or 3:00 p.m. on December 4, 2013. Although the tenant acknowledged receiving the landlord's hearing package and evidence package on that date, he objected to the landlord's unauthorized entry to his

rental premises, noting that this had happened a number of times during his tenancy. The landlord said that this was the only way that he could serve the tenant with documents provided to him by the Residential Tenancy Branch.

While I accept that the tenant was served the hearing package and evidence package in accordance with section 89 of the *Act*, I noted at the hearing that the landlord's sworn testimony confirmed the tenant's allegation that the landlord has illegally entered his rental premises in contravention of the *Act*. I noted that I would be taking this evidence into account in my decision.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary award for unpaid rent? Should an order be issued to the landlord to return the tenant's bike and bike lock to the tenant? Should an order be issued against the landlord requiring him to refrain from entering the tenant's rental unit, except in accordance with the *Act*? Should any other orders be issued with respect to this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The parties agreed that the landlord did not create a written Residential Tenancy Agreement for this tenancy. However, they both confirmed that the tenant did sign an Intent to Rent form on September 1, 2013, in which the tenant agreed to take occupancy of one of the rooms in the landlord's basement as of September 1, 2013. Monthly rent was identified as \$395.00, which was to be paid by the first of each month by direct mail. Although the Intent to Rent form identified that there was to have been a \$198.00 security deposit paid by the tenant, the parties agreed that the tenant did not make this payment.

The landlord applied for a monetary award of \$635.00. The landlord entered into written evidence that the tenant paid \$200.00 to his caretaker when this tenancy began. The landlord's written evidence stated that "By end of September he had only paid the \$200.00 and for the month of October and November he paid cash of \$375.00 each month." The amount identified as owing on the 10 Day Notice was \$240.00, which the landlord said included the unpaid security deposit. The landlord also claimed that the tenant has failed to pay his December 2013 rent of \$395.00. He gave undisputed testimony that the tenant claimed to have placed his cash payment for December 2013 in an envelope for the person in the adjacent room in the basement to forward to the landlord. The landlord's request for a monetary award of \$635.00 included the \$240.00

he identified as owing in the 10 Day Notice plus the unpaid \$395.00 in rent owing for December 2013.

At the hearing, the landlord gave a different account of the tenant's payments. He testified that the tenant made a further payment of \$200.00 to the landlord in mid-September 2013. He said that the tenant delayed paying \$375.00 towards his October 2013 rent until the first week in November. He said that the tenant made a further payment to the landlord through his roommate on November 28, 2013, which the landlord applied to the tenant's November 2013 rent. The landlord did not issue any receipts for any payments made by the tenant.

The tenant said that he typically made his rent payments shortly after receiving his shelter allowance cheque from the Ministry of Social Development during the last week of each month, which was to be applied to the following month's rent. The tenant confirmed that his cash payment placed under his roommate's door for December 2013, could not be located and has likely been stolen.

The tenant's application to cancel the 10 Day Notice included his claim that the value of his tenancy agreement had been devalued as a result of the landlord's frequent entries into his rental unit and by the landlord's failure to address the tenant's concerns about infestations of rodents and bugs. The tenant also requested the return of his bicycle and lock, which the landlord admitted he seized in order to secure some means of ensuring he will be paid his rent. The landlord confirmed that he has obtained no order under the *Act* to enable him to seize the tenant's personal possessions.

Analysis

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 all issues currently under dispute arising out of this tenancy under the following final and binding terms:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on December 31, 2013, by which time the tenant will have vacated the rental unit.
2. The landlord agreed to return the tenant's bicycle and lock to the tenant by 5:00 p.m. on December 13, 2013.
3. The tenant agreed that if the landlord complied with the second term of their agreement as outlined above that the tenant would pay the landlord \$300.00 by

December 20, 2013, an amount that both parties agreed constituted a full and complete settlement of all monetary issues in dispute between them at this time.

4. The landlord agreed that he will not access the tenant's rental unit for the remainder of this tenancy unless he provides the tenant with 24 hours written notice to do, or under emergency circumstances as specified under the *Act*.

Conclusion

The landlord's existing 10 Day Notice is set aside and is of no force or effect. 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 in accordance with their agreement. The landlord is provided with these Orders in the above terms and the tenant must be served with this Order in the event that the tenant does not vacate the premises by the time and date set out in their agreement. Should the tenant 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 \$300.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the landlord abides by the second term of their settlement agreement as outlined above **and** the tenant does not abide by the monetary terms as outlined in the third term of their settlement agreement. 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.

I also order the landlord to abide by the terms of the *Act* with respect to accessing the tenant's rental unit during the remainder of this tenancy and to return the tenant's bicycle and lock. If the landlord does not abide by this order, the tenant is at liberty to apply for a monetary Order for the reduction in the value of his tenancy resulting from the landlord's failure to comply with this order and the *Act*.

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: December 12, 2013

Residential Tenancy Branch

