



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 both the landlord and the tenants 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 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 his filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

All parties attended the hearing, including the female tenant who was not sworn in as she did not intend to testify. The parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to discuss the issues arising out of their applications with one another. The male tenant (the tenant) confirmed that the tenants were handed the 10 Day Notice by the landlord on December 2, 2013. The landlord testified that on December 13, 2013, he received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on December 11, 2013. The tenant confirmed that on December 17, 2013, both tenants received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on December 13, 2013. I am satisfied that the parties served one another with the above documents in accordance with the *Act* and that the tenants received a copy of the landlord's written evidence.

The tenant testified that he sent the landlord a copy of the tenants' written evidence package on Friday, January 17, 2014. Section 90 of the *Act* establishes that documents

sent by registered mail are deemed served on the fifth business day after their mailing. In this case, the landlord said that he had not received the tenants' written evidence package. As the tenants did not serve their written evidence to the landlord in accordance with the time frame set out in the Residential Tenancy Branch's Rules of Procedure and in sufficient time to allow the landlord to review that evidence, and there was no apparent reason for the delay in sending this written evidence, I advised the parties that I would not be considering the tenants' late written evidence in my decision-making.

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 and losses arising out of this tenancy? Are the tenants entitled to a monetary award for losses arising out of this tenancy? Are either of the parties entitled to recover their filing fees from one another?

Background and Evidence

The tenants moved onto the landlord's rental property with their 5th wheel vehicle during the summer of 2013. While the tenant performed work on the premises, the landlord did not charge pad rental for this vehicle where they were residing. During this period, the landlord also paid the tenant for work he was performing there, although the amount of his payments and the extent of the work undertaken by the tenant was disputed by the parties. The parties agreed that the tenants moved into the house on the rental property by November 12, 2013, while the house was still being repaired.

The landlord entered into written evidence a copy of a Residential Tenancy Agreement (the Agreement) he prepared and signed for this tenancy. According to the terms of this Agreement, the tenants were to pay a monthly rent of \$1,300.00, payable in advance on the first of each month, plus hydro and heat. The landlord testified that the parties had an oral agreement whereby the tenants would pay him \$900.00 in rent for November 2013, and would commence paying the regular monthly rent for the following month. The tenants did not sign the Agreement and did not pay either a security deposit or a pet damage deposit included in that Agreement.

The landlord applied for a monetary award of \$4,800.00, which was to compensate him for unpaid rent of \$900.00 for November 2013, unpaid rent of \$1,300.00 for each of December 2013 and January 2014, and an anticipated loss of rent of \$1,300.00 for February 2014.

The tenants applied for a monetary award of \$3,800.00. They maintained that they had an oral agreement with the landlord whereby work that the tenant(s) were undertaking to clear the rental property and repair and renovate the home was to have been credited towards their monthly rent when they took occupancy of the premises. The tenants maintained that the receipts provided by the landlord did not cover all of the work undertaken by the tenant and that they were entitled to a significant credit towards their rent. They maintained that no rent was actually owed at the time the landlord issued his 10 Day Notice.

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. They agreed to settle all of the issues in dispute between them on the following terms.

1. Both parties agreed that this tenancy will end by 1:00 p.m. on January 31, 2014, by which time the tenants will have vacated the rental unit.
2. The tenants agreed to settle all monetary issues arising out of this tenancy by paying the landlord \$2,000.00 by February 28, 2014.
3. Both parties agreed that the above-noted terms, including the monetary settlement identified above, constituted a final and binding resolution of all issues monetary or otherwise currently arising out of this tenancy. They furthermore agreed that neither party will initiate any new actions of any kind arising out of the issues currently under dispute.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties.

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 tenants do not vacate the rental premises in accordance with their agreement. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order in the event that the tenants do not vacate the premises by the time and date set out in their agreement. Should the tenants 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 \$2,000.00. I deliver this Order to the landlord in support of the above agreement for use in the event that the tenants do not abide by the terms of the above settlement. The landlord is 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.

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 24, 2014

Residential Tenancy Branch

