



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNDC, MNSD, FF
MT, CNQ, CNC, MNR, MNDC, RP, AAT, LAT, RR

Introduction

This hearing was scheduled in response to 2 applications: i) by the landlord for an order of possession / a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and ii) by the tenants for more time to make an application to cancel a notice to end tenancy / cancellation of a notice to end tenancy because the tenant does not qualify for subsidized housing / cancellation of a notice to end tenancy for cause / a monetary order as compensation for the cost of emergency repairs / compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to make repairs to the unit, site or property / permission for access to (or from) the unit or site for the tenant or the tenant's guests / permission to change the locks to the rental unit / and permission to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties attended and / or were represented and gave affirmed testimony.

Issue(s) to be Decided

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

Background and Evidence

Evidence includes a written tenancy agreement which documents the start date of tenancy as October 01, 2013. Monthly rent of \$800.00 is due and payable in advance on the first day of each month. However, it is understood that tenancy actually began on June 01, 2012, at which time a security deposit of \$400.00 was collected.

Arising from rent which was unpaid when due on February 01, 2014, the landlord issued a 10 day notice to end tenancy for unpaid rent dated February 28, 2014. The notice was served in-person on that same date. A copy of the notice was submitted in

evidence. Subsequently, the tenants filed an application for dispute resolution on February 11, 2014. In their application, however, the tenants do not specifically seek cancellation of the 10 day notice. The date shown on the notice by when the tenants must vacate the unit is March 10, 2014, however, the tenants continue to reside in the unit and they have made no further payment toward rent.

During the hearing the parties undertook to resolve some aspects of the dispute.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 63 of the Act speaks to the **Opportunity to settle dispute**, and provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision discussion led to limited settlement, and it was specifically agreed as follows:

RECORD OF SETTLEMENT

- that the tenants will vacate the unit by not later than **1:00 p.m., Monday, April 07, 2014**, and that an **order of possession** will be issued in favour of the landlord to that effect;
- that the tenants withdraw their application for compensation in the total amount of \$84.69 (\$75.00 + \$9.69);
- that the landlord waives any entitlement to rent for the period from April 1 to 7, 2014.

Based on the documentary evidence and testimony, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated February 28, 2014. The tenants did not pay the outstanding rent within 5 days of receiving the notice, and did not apply to dispute the notice. The tenants do not dispute that they have paid no rent for either February or March 2014. Accordingly, I find that the landlord has established entitlement to compensation of \$800.00 for unpaid rent for February, \$800.00 for unpaid rent for March, in addition to recovery of the \$50.00 filing fee [**total: \$1,650.00**].

Section 72 of the Act addresses **Director's orders: fees and monetary orders**, in part:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

While the parties agreed that tenancy would continue for several more days until April 07, 2014, the tenants did not agree to the landlord's retention of the security deposit. However, in light of the uncontested debt for unpaid rent for February and March 2014, I find that it would be unfair and unreasonable to delay disposition of the security deposit until after a move-out condition inspection is completed and / or the end of tenancy. Accordingly, I order that the landlord retain the security deposit of **\$400.00**, and I grant the landlord a **monetary order** for the balance owed of **\$1,250.00** (\$1,650.00 - \$400.00)

As the end of tenancy nears, the attention of the parties is drawn to section 37 of the Act which addresses **Leaving the rental unit at the end of a tenancy**:

37(1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The tenants identified ongoing concerns related to the condition of the unit, as well as its legal status, and spoke generally of their associated contacts with certain other authorities. However, the application before me does not include a related articulated application for particular compensation. Accordingly, with the exception of aspects of the dispute which have been settled, the tenants' application is hereby dismissed.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **1:00 p.m., Monday, April 07, 2014**. This order must be served on the tenants. Should

the tenants 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.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,250.00**. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order 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: April 01, 2014

Residential Tenancy Branch

