



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL

APPLICATION:

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for an order to set aside a Notice to End tenancy dated July 29, 2014 to be effective September 30, 2014. The Notice to End Tenancy is issued under section 49 of the *Residential Tenancy Act* (the Act).

SERVICE:

I accept that the tenant was properly served with the Notice to End Tenancy and the landlord with the Application for Dispute Resolution.

ISSUE:

Has the landlord proved on the balance of probabilities that he is renovating or repairing the subject property and if so, does the rental unit need to be vacant in order for the landlord to do those renovations?

THE HEARING:

The landlord stated on the Notice that the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenant related his tenancy history concerning repairs and the Notices to End Tenancy and offers made by the landlord. He questioned the real intent of the landlord and provided photographs and testimony in support of his submissions. He noted he had sent his rent for October by registered mail and the lawyer for the landlord said they had received it. He questioned whether the rental unit needs to be vacant in order for the landlord to do those renovations and questions the contractors' quotes and statements. He provided written submissions and photographs to support his position and referred me to some Supreme Court decisions on this.

After further discussion, the parties negotiated a settlement agreement with terms as follows:

Settlement Agreement

1. **The tenant will vacate the unit on October 31, 2014. The landlord will receive an Order of Possession effective October 31, 2014.**

2. **The landlord will pay the tenant \$2,175 (\$2,000 + his security deposit) on November 3, 2014 by trust cheque to be picked up at his lawyer's office after 9:30 a.m. and providing the tenant has vacated the unit as promised.**
3. **The landlord will not cash the tenant's cheque for October rent but will return it to him promptly.**
4. **The tenant will permit the contractors of the landlord to access the unit before October 31, 2014 to commence some preparatory work and the landlord will ensure that water and power continue to be available until October 31 and the tenant will be able to use the bathroom, stove and refrigerator.**
5. **This agreement and the accompanying orders settle all matters between the parties in respect to this tenancy.**

Analysis and Conclusion:

Pursuant to the above noted Agreement, I find the landlord entitled to an Order of Possession effective October 31, 2014. I find the tenant entitled to a Monetary Order for \$2,175 as agreed as compensation of \$2,000 and \$175 for security deposit refund.

I HEREBY ORDER the landlord to maintain power and water to the unit, kitchen and bathroom until October 31, 2014 and allow the tenant access to the stove, refrigerator and bathroom.

I HEREBY ORDER the landlord to return the tenant's rent cheque for October to him immediately.

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: October 08, 2014

Residential Tenancy Branch

