



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR, MNSD, MNDC, FF, O, CNR

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) 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;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order, requested pursuant to section 38;
- other unspecified remedies; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated February 16, 2015 ("10 Day Notice"), pursuant to section 46.

The two landlords and their agent, SK (collectively "landlords") and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. Both landlords confirmed that their agent had authority to speak on their behalf at this hearing.

The landlords testified that the tenant was served with the landlords' application for dispute resolution hearing package ("Landlords' Application") by way of registered mail on February 26, 2015. The tenant confirmed receipt of the Landlords' Application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the Landlords' Application. The landlords testified that they served the tenant with a digital evidence file by way of email on February 27, 2015. The tenant stated that he received an email from the landlords but he did not open any digital file because he was unsure of its contents and was fearful that it may cause a computer virus. During the hearing, I advised both parties that I would not be accepting the landlords' digital evidence file at this hearing. I find that the digital evidence was not served in accordance with section 88 of the *Act* which does not allow service by way of email. I also find

that the landlords failed to confirm that the tenant could see and hear the digital evidence prior to the hearing, as attested to by the landlords in their "Digital Evidence Details Form, RTB-43" and as required by Residential Tenancy Branch ("RTB") Rule of Procedure 3.10.

The tenant testified that he served the landlords with the tenant's application for dispute resolution hearing package ("Tenant's Application") on February 23, 2015 by way of registered mail. The landlords confirmed receipt of the tenant's application. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's Application.

The tenant testified that he did not serve the landlords with a digital evidence file that he provided to the RTB. During the hearing, I advised both parties that I would not be accepting the tenant's digital file at this hearing, as it was not served upon the landlords as required by Rules 3.1 and 3.10 of the RTB Rules of Procedure.

Issues to be Decided

Should the landlords' 10 Day notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award for unpaid rent and/or for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Are the landlords entitled to other unspecified remedies?

Background and Evidence

Both parties agreed that this fixed term tenancy began on November 8, 2014 and was to end on March 8, 2015. However, both parties agreed that the tenant could vacate on April 8, 2015, if rent was paid on time. Both parties agreed that only an oral agreement to end the tenancy on April 8, 2015 was made, but no further tenancy agreement was signed in writing for this extra month of tenancy. Monthly rent in the amount of \$975.00 is payable on the first day of each month. Both parties agreed that the tenant paid a security deposit of \$300.00 to the landlords on November 8, 2014 and the landlords continue to retain this deposit. The tenant continues to reside in the rental unit.

Both parties provided copies of the tenancy agreement. Both parties agreed that the tenant made unilateral changes to the tenancy agreement at the beginning of the tenancy, a copy of which was provided to and accepted by the landlords until the 10 Day Notice was issued on

February 16, 2015. The tenant made notations that first and last month's rent of \$1,950.00 total was paid on November 8, 2014 and that a security deposit of \$300.00 was paid on November 8, 2014. The tenant made changes to the start and end dates of this tenancy, which was originally written as October 8, 2014 to 2015, and changed to November 8, 2014 to March 8, 2015. The landlords testified that the tenant's changes accurately represented the agreement between the parties.

Both parties agreed that the landlords made unilateral changes to the tenancy agreement without the agreement of the tenant. These changes indicate that the tenant paid rent of \$975.00 for the first month of tenancy, that \$487.50 was paid for a security deposit and \$487.50 was paid for a pet damage deposit for one cat, while an extra \$300.00 was paid as a pet damage deposit for the tenant's second cat. The landlords conceded that they erred in making these changes, as they did not reflect the true agreement between the parties.

The landlords issued the 10 Day Notice indicating that rent of \$975.00 was due on February 8, 2015. The landlords initially sought to obtain an order of possession and a monetary order of \$975.00 for February 2015 rent. The tenant seeks to cancel the 10 Day Notice. During the hearing, the landlords conceded that on November 8, 2014, the tenant paid last month's rent of \$975.00, which was intended to cover the period from February 8 to March 8, 2015. The landlords agreed that their 10 Day Notice required the tenant to vacate the rental unit by February 26, 2015, the effective date on the notice, which was prior to the fixed term end date of March 8, 2015. The landlords agreed that their 10 Day Notice was cancelled because the rent was paid by the tenant.

Both parties agreed that the tenant does not owe any unpaid rent from November 8, 2014 to March 8, 2015. Both parties agreed that the tenant currently owes rent of \$975.00 from March 8 to April 8, 2015. The tenant testified that the landlords refused his attempt to pay prorated rent from March 8 to 18, 2015, for residing in the rental unit until this hearing date. During the hearing, the tenant verbally provided the landlords with his forwarding address, at the request of the landlords.

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 the following final and binding settlement of all issues currently under dispute at this time:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on April 8, 2015, by which time the tenant and any other occupants will have vacated the rental unit;
 - a. Both parties agreed that this tenancy will end on April 8, 2015, with no renewals or extensions for the tenant to remain in the rental unit after this date;

2. The tenant agreed to pay the landlords the total amount of \$975.00 by way of a bank draft by no later than 8:00 p.m. on March 18, 2015;
 - a. The landlords agreed that the above payment in condition #2 is made in full satisfaction of rent for March 8 to April 8, 2015;
 - b. The landlords agreed to provide the tenant with a receipt for the rent payment in condition #2, by no later than 8:00 p.m. on March 18, 2015;
3. Both parties agreed that the tenant's security deposit, which is in the amount of \$300.00, will be dealt with at the end of this tenancy, in accordance with section 38 of the *Act*;
4. The landlords agreed that rent of \$975.00 from February 8 to March 8, 2015 has been paid in full by the tenant;
5. The landlords agreed to withdraw their 10 Day Notice, dated February 16, 2015;
6. The tenant agreed to provide the landlords with a copy of his forwarding address in writing;
7. Both parties agreed to conduct a move-out condition inspection and report on April 8, 2015 with the tenant and landlord(s) and/or landlords' agent present, in accordance with the *Act*;

These particulars comprise a final settlement of all aspects of this dispute. Both parties gave verbal sworn affirmation at the hearing that they understood and agreed to the above terms as legal, final, binding and enforceable, settling all aspects of this dispute.

As this matter was settled by the parties and a decision was not made on the merits, I decline to award the \$50.00 filing fee to the landlords. The landlords must bear the cost of their own filing fee.

Conclusion

The landlords' 10 Day Notice, dated February 16, 2015, is cancelled and of no force or effect.

To give effect to the settlement reached between the parties, and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlords **only** if the tenant and any other occupants on the premises fail to vacate the rental premises by 1:00 p.m. on April 8, 2015. The landlords are provided with this Order in the above terms and the tenant must be served with this Order in the event that the tenant and any other occupants do not vacate the premises by 1:00 p.m. on April 8, 2015. 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 and as advised to both parties during the hearing, I issue a monetary Order in the landlords' favour in the amount of \$975.00. I deliver this Order to the landlords in support of the above agreement for use **only** in the event that the tenant does not abide by condition #2 of the above monetary agreement. The landlords are provided with this Order in the above terms and the tenant must be served with a copy of this Order as soon as possible after a failure to comply with condition #2 of the above

monetary agreement. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlords are not entitled to recover their \$50.00 filing fee from the tenant and they must bear the cost of this fee.

The tenant's security deposit of \$300.00 is to be dealt with at the end of this tenancy in accordance with 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: March 18, 2015

Residential Tenancy Branch