



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURY 21 PERFORMANCE REALTY & MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, CNR, MNR, MNSD, FF

Introduction

This hearing dealt with landlord company CPRM's application pursuant to the *Residential Tenancy Act* ("Act") for:

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

This hearing also dealt with the tenants' cross-application against both landlord company CPRM and landlord DD, pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated April 10, 2015 ("10 Day Notice"), pursuant to section 46;
- authorization to obtain a return of the pet damage deposit, pursuant to section 38.

"Landlord DD" and the two tenants 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. The landlord confirmed that she is the property manager for the landlord company CPRM ("landlord") named in this application and that she had authority to represent it as an agent at this hearing. Tenant MT confirmed that she is the legal advocate for the other tenant MF ("tenant") named in this application and that the tenant is the only tenant currently residing in the rental unit.

The tenant's advocate confirmed receipt of the landlord's 10 Day Notice on April 10, 2015, by way of posting to the tenant's rental unit door on the same date. In

accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Landlord's Application"), which was sent by way of registered mail on May 1, 2015. However, the tenant stated that she forgot to advise her advocate about the Landlord's Application and that she did not bring it to this hearing with her. During the hearing, I confirmed the contents of the Landlord's Application with both parties and noted that both parties submitted the same written evidence with their applications. The landlord submitted an additional one-page document with its application, the partial contents of which were read aloud to the tenant and her advocate during the hearing. The tenant's advocate confirmed that she did not require the entire contents to be read aloud during the hearing due to time constraints. The tenant's advocate also declined the opportunity to adjourn the hearing in order to obtain and review a copy of the Landlord's Application. As the Landlord's Application was served prior to this hearing and in accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the Landlord's Application. I find no prejudice to the tenant in considering the Landlord's Application at this hearing, as the tenant and her advocate consented.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Tenants' Application") by way of registered mail, which was sent on April 21, 2015. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the Tenants' Application.

Issues 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?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award for the return of her pet damage deposit?

Background and Evidence

The tenant's advocate testified that this tenancy began on May 1, 2007. Both parties agreed that monthly rent in the current amount of \$761.00 is payable on the first day of each month, pursuant to legal notices of rent increase previously issued to the tenant. A security deposit of \$375.00 and a pet damage deposit of \$350.00 were paid by the tenant and the landlord continues to retain both deposits. The tenant continues to

reside in the rental unit. A written tenancy agreement was provided by both parties for this hearing.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$276.40 was due on April 1, 2015. The notice indicates an effective move-out date of April 24, 2015. The landlord seeks a monetary order for this amount plus the \$50.00 filing fee for its application. The landlord provided a rent ledger from December 30, 2007 to April 2, 2015, indicating that as of April 2, 2015, rent of \$276.40 was owed by the tenant. At the hearing, both parties agreed that the tenant owes unpaid rent of \$150.00 for the period ending on April 30, 2015. Both parties agreed that the tenant still owes unpaid rent of \$761.00 for June 2015.

The tenant stated that her tenancy agreement did not require a pet damage deposit, despite the fact that she had a dog at the beginning of her tenancy. She indicated that this dog passed away approximately two years ago. The tenant stated that she paid the landlord a pet damage deposit, pursuant to the landlord's request, when the tenant's friend brought a new dog into the rental unit. The tenant indicated that this dog has already left the rental unit and she requires the return of her pet damage deposit from the landlord. The landlord stated that the pet damage deposit is dealt with at the end of this tenancy. During the hearing, I read aloud section 38 of the *Act* to the tenant, as per her request.

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. The tenant agreed to pay the landlord \$765.00 by June 1, 2015 and an additional \$150.00 by June 2, 2015, in full satisfaction of all rent owing for this tenancy until June 30, 2015;
2. Both parties agreed that this tenancy will end by 1:00 p.m. on June 30, 2015, by which time the tenant and any other occupants will have vacated the rental unit;
3. The landlord withdrew the application to recover the \$50.00 filing fee;
4. Both parties agreed that the tenant's pet damage deposit will be dealt with at the end of this tenancy in accordance with section 38 of the *Act*;

5. Both parties agreed that this settlement agreement constitutes a final and binding resolution of both the Landlord's Application and the Tenants' Application at this hearing.

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

Conclusion

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 landlord **only** if the tenant and any other occupants on the premises fail to vacate the rental premises by 1:00 p.m. on June 30, 2015. The landlord is 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 June 30, 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.

To give effect to this settlement agreement, I order that the existing monetary terms of the written tenancy agreement between these parties and the dates when payments are due are to be amended as per condition #1 as set out above, until July 1, 2015.

The landlord's 10 Day Notice, dated April 10, 2015, is cancelled and of no force or effect. The landlord's application to recover the \$50.00 filing fee is withdrawn. The tenant's pet damage deposit will be dealt with at the end of this tenancy in accordance with section 38 of 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: June 01, 2015

Residential Tenancy Branch