



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, CNR, FF

Introduction

This hearing dealt with the landlords' 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 and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for the 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 two 10 Day Notices to End Tenancy for Unpaid Rent, dated April 17, 2015 and April 20, 2015 ("two 10 Day Notices"), pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The two landlords, landlord MH ("landlord") and "landlord DH," and the tenant's two agents, tenant HO ("tenant") and "tenant CO" 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 tenant confirmed that she had authority to represent her father, the tenant named in this application, as an agent at this hearing. Tenant CO did not provide any testimony at this hearing.

Both parties confirmed receipt of each other's application for dispute resolution hearing packages. In accordance with sections 88 and 90 of the *Act*, I find that both parties were duly served with each other's applications.

Issues to be Decided

Should the landlords' two 10 Day Notices 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 for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is either party entitled to recover the filing fee for their application(s)?

Background and Evidence

The landlord testified that this month-to-month tenancy began on May 1, 2009. Monthly rent in the amount of \$1,650.00 is payable on the first day of each month. The landlords indicated that a security deposit of \$825.00 was due but the tenant did not pay because painting work was accepted by the landlords in lieu of the deposit. The tenant testified that a security deposit of \$825.00 was paid to the landlords by the tenant. The tenant continues to reside in the rental unit. A written tenancy agreement was provided by both parties for this hearing.

The tenant indicated that the landlords did not provide a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") on the appropriate Residential Tenancy Branch ("RTB") form. The tenant stated that the landlords sold the property to new owners who intend to take possession of the rental unit by July 3, 2015.

The tenant indicated that the landlords issued the 10 Day Notice, dated April 20, 2015, with an effective move-out date of April 29, 2015, for unpaid rent of \$1,650.00 for April 2015. The tenant stated that the landlords verbally offered free rent for April 2015 to the tenant, as one month's rent compensation under section 51 of the *Act*. The landlords denied that the tenant was entitled to one month's free rent, indicating that there was no such agreement between the parties.

The landlords indicated that they issued the 10 Day Notice, dated April 17, 2015, with an effective move-out date of April 27, 2015, for unpaid rent of \$1,650.00 for September 2014. The landlord stated that while the landlords initially agreed to forego September 2014 rent from the tenant, they were pursuing this claim against the tenant at this hearing.

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 June 30, 2015, by which time the tenant and any other occupants will have vacated the rental unit;
2. Both parties agreed that the tenant is entitled to one month's free rent compensation, pursuant to section 51 of the *Act*, on the following terms:
 - a. The tenant will not be required to pay any rent to the landlords for the month of June 2015;
 - b. The landlords will not be issuing a 2 Month Notice to the tenant on an RTB form.
3. The tenant will pay the landlords a total of \$1,650.00 for April 2015 rent by no later than 7:00 p.m. on June 12, 2015 by way of a certified cheque;
4. The landlords agreed to waive September 2015 rent of \$1,650.00 and not pursue this claim against the tenant;
5. The landlords agreed to withdraw their application to recover the \$100.00 filing fee for their application and the tenant agreed to withdraw the application to recover the \$50.00 filing fee for his application.

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 settlement terms, free of any duress or coercion. Both parties confirmed that they understood that the above settlement terms are 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 landlords **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 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 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.

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 \$1,650.00. I deliver this Order to the landlords in support of the above agreement for use **only** in the event that the tenant does not pay the landlords \$1,650.00 in accordance with condition #3 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 the tenant does not pay the landlords \$1,650.00 as per condition #3 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' two 10 Day Notices, dated April 17, 2015 and April 20, 2015, are cancelled and of no force or effect.

Both parties' applications to recover the filing fee are withdrawn.

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 15, 2015

Residential Tenancy Branch

