



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF; CNR, MNDC

Introduction

This hearing dealt with the landlord'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 and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("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; 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 May 4, 2015 ("10 Day Notice"), pursuant to section 46; and
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67.

Both parties 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 parties confirmed receipt of each other's application for dispute resolution hearing notices. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with each other's application notices.

The landlord confirmed that she did not serve the tenant with her written evidence package for this hearing. During the hearing, I advised both parties that I would not be considering the landlord's written evidence for this hearing, as it was not served upon the tenant in accordance with Rule 3.1 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules").

The tenant confirmed that she personally served the landlord with her written evidence package on June 15 or 16, 2015. The tenant stated that her evidence was served late because she was ill, that she did not have access to all of her written documents and that she did not have the resources to properly serve the landlord with her written evidence. The landlord confirmed that she did not receive the tenant's written evidence package. During the hearing, I advised the tenant that her evidence was served late, as it was due at least 14 days prior to this hearing, in accordance with Rule 3.14 of the *Rules*. I advised both parties that I would not be considering the tenant's written evidence for this hearing, as it was not served by the above deadline outlined in the *Rules* and the landlord indicated that she had not received a copy of the evidence. The tenant testified that she wished to proceed with the hearing rather than requesting an adjournment, on the basis of her verbal testimony alone, as she was aware of the consequences of her written evidence not being considered at this hearing.

The tenant confirmed receipt of the landlord's 10 Day Notice on May 4, 2015, by way of posting to her 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's application to dispute the 10 Day Notice was filed within 10 days of receipt, on May 8, 2015.

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 either party entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to a monetary award for unpaid rent?

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

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

Background and Evidence

The landlord testified that this tenancy began on February 1, 2015. Both parties agreed that monthly rent in the amount of \$1,100.00 is payable on the first day of each month. Both parties agreed that a security deposit of \$550.00 was paid by the tenant and the landlord continues to retain this deposit.

The landlord issued the 10 Day Notice for unpaid rent for April and May 2015, in the total amount of \$2,200.00. The notice indicates an effective move-out date of May 14, 2015. The landlord stated that the tenant did not pay rent for April, May or June 2015. The tenant stated that she did. The landlord seeks \$3,300.00 total in unpaid rent plus the \$50.00 filing fee for her Application.

The tenant seeks \$2,500.00 for utility costs, cleaning and garbage removal costs, electrical labour work, and moving expenses from the landlord. The tenant confirmed that she was not seeking \$175.00 for plumbing issues because she did not have an invoice for this amount. The tenant stated that the rental unit was not provided in a liveable condition when she moved in and that she had to perform cleaning and garbage removal totalling \$750.00, as well as have the fireplace and light fixtures rewired for \$472.50, in order to bring the rental unit to an acceptable living condition. The tenant stated that the landlord agreed to perform any cleaning or repairs prior to her moving in. The landlord disputes this fact. The landlord indicated that the tenant inspected the rental unit four times before moving in and that she moved in despite having apparent concerns over the rental unit. The tenant also claimed that she paid \$234.65 for utilities for April and May 2015, which the landlord agreed to pay on her behalf. The landlord disputes this fact, indicating that the tenant changed the utilities account name to her own and agreed to pay this cost herself. The tenant also states that she is entitled to her future moving costs of \$880.00 because the landlord violated the strata bylaws by not giving her a copy of the bylaws and because she has to move since the rental unit was not provided to her in a liveable condition.

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 July 31, 2015, by which time the tenant and any other occupants will have vacated the rental unit;
2. The landlord agreed that rent has been paid in full by the tenant until June 30, 2015;

3. Both parties agreed that this settlement agreement constitutes a final and binding resolution of both the landlord's application and the tenant's application at this hearing, including the monetary applications made by both parties;
4. Both parties agreed that the tenant's security deposit of \$550.00 will be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

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, free of any duress or coercion. Both parties confirmed that they understood that this agreement is legal, final, binding and enforceable, which settles 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 July 31, 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 July 31, 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.

The landlord's 10 Day Notice, dated May 4, 2015, is cancelled and of no force or effect. The landlord agreed to bear her own cost for the \$50.00 filing fee for her application. The tenant's security 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 22, 2015

Residential Tenancy Branch