



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION AND RECORD OF SETTLEMENT

Dispute Codes OPL, OPR, MNR, MNDC, FF; MT, CNR, MNDC

Introduction

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

- an order of possession for landlord use pursuant to section 55;
- 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* (the "*Regulation*") or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

This hearing also addressed the tenant's cross application for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 66;
- cancellation of the landlords' 10 Day Notice pursuant to section 46; and
- 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;

The tenant and the landlord along with his agent and translator (collectively the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his wife had authority to speak on his behalf.

The landlord confirmed receipt of the tenant's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the application.

Preliminary Issue – Service of Landlord's Application

The landlord testified that on July 8, 2016 he forwarded the landlord's application for dispute resolution hearing package via courier to the tenant. The landlord provided a courier tracking number as proof of service. The tenant testified that she did not receive the landlord's application for dispute resolution hearing package.

The Residential Tenancy Branch Temporary Order that allows service of documents by courier establishes that applications are considered sufficiently served if the sender requests signature upon delivery and;

- the recipient of the documents signs a document provided by the courier which acknowledges receipt; or
- the courier leaves a notice of attempted delivery in the mailbox or posted to the door; or
- if the courier is not able to leave the notice of attempted delivery in the mailbox or posted to the door, the courier leaves the notice of attempted delivery in a conspicuous place and the sender provides proof that they have attempted to contact the recipient by telephone or email to inform the recipient of the attempted delivery; and
- any document sent by courier during this period is deemed to have been received on the actual date of delivery in cases where the recipient of the document signs a document acknowledging receipt, or on the 5th day after the document or the delivery attempt notice is sent, in any other case.

Although the landlord has provided a tracking sheet that details the mailing, this tracking sheet does not indicate when or if an attempted delivery notice was sent to the tenant. In the absence of the recipient's signature or evidence of an attempted delivery notice, I find that the tenant has not been deemed served with the landlord's application. Accordingly, the landlord's application is dismissed without leave to reapply.

Preliminary Issue –Settlement

During the hearing the landlord and tenant agreed the tenancy would end October 1, 2016 at 1:00 p.m. Consequently, the tenant is no longer seeking cancellation of the 10 Day Notice and this portion of the tenant's application is dismissed without leave to reapply.

Section 63 of the *Act* provides that if the parties settle their dispute during a hearing the Director may record the settlement in the form of a Decision or an Order. Pursuant to

the above provision, discussion between the parties during the hearing led to a settlement / resolution. Specifically, the parties agreed and confirmed as follows;

1. the tenant and landlord agree that this tenancy will end no later than Saturday, October 1, 2016 at 1:00 p.m., and,
2. the landlord will receive an order of possession effective October 1, 2016 at 1:00 p.m.

So as to perfect this settlement agreement, I grant the landlord an order of possession, effective 1:00 p.m. October 1, 2016.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, *Regulation* or tenancy agreement?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on July 20, 2015 on a month-to-month basis. Rent in the amount of \$950.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$475.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant testified that this tenancy has been the subject of multiple hearings. For ease of reference, the file numbers for these hearings are set out on the front page of this decision.

The tenant is seeking \$500.00 in compensation for harassment by the landlord. The tenant testified that on May 10, 2016 after receiving a handwritten note from the landlord about repossession of the rental unit, the landlord entered the unit without authorization. As a result of this entry, a verbal altercation between the landlord and tenant occurred in the presence of a police member. The tenant testified that on June 20, 2016, again after receiving another handwritten note from the landlord a verbal altercation took place, again in the presence of a police member. Finally the tenant testified that on July 28, 2016 the landlord attacked the tenant with a chair. The landlord acknowledged once instance of entering the rental unit without authorization. During the hearing, the landlord offered an apology for this infraction.

Analysis

In respect to a monetary claim for damages or for a monetary loss to be successful an applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with evidence and the applicant must show how they mitigated or what reasonable efforts they made to minimized the claimed loss.

Residential Tenancy Branch Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

Section 28 of the *Act* establishes a tenant's entitlement to quiet enjoyment which include rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit and use of common areas for reasonable and lawful purposes, free from significant interference.

I award the tenant nominal damages in the amount of \$150.00 for the loss of quiet enjoyment. I find that the tenant showed, through testimony that there were at least two breaches of reasonable privacy, one of which the landlord acknowledged.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

The tenant's application to cancel the 10 Day Notice is dismissed without leave to reapply.

To perfect the above settlement agreement, I grant the landlord an order of possession, effective 1:00 p.m. October 1, 2016. The tenant must be served with this order. If the landlord serves the order of possession on the tenant and the tenant fails to comply with

the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

I order the tenant to deduct \$150.00 from future rent payable to the landlord in full satisfaction of the monetary award made at this hearing.

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: August 17, 2016

Residential Tenancy Branch