



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

In the matter of the *Residential Tenancy Act*, SBC 2002,c.78., as amended

Between

Decision

Dispute Codes: CNL FF

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

- An order to cancel the notice to end tenancy for cause pursuant to Section 49.
- An order to recover the cost of filing the Application for Arbitration pursuant to Section 72.

Issues

- Is the tenant entitled to an order to cancel the notice to end tenancy?
- Is the landlord entitled to an order of possession as per the notice to end tenancy?
- Is the tenant entitled to a monetary order for one month's rent as compensation and the fee to file this application?
- What is the effective date of the notice to end tenancy?

Background and Evidence

I find that the Notice to End Tenancy for landlord use and to carry out renovations, dated July 28, 2008 was served on the tenant on July 31, 2008 by way of personal

service with an effective date of September 30, 2008. The Application for Arbitration dated August 14, 2008 was served on the landlord on August 15, 2008 by personal service.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing a decision has been reached.

The tenant testified that the tenancy is on a month to month basis and the monthly rent is \$ 700.00 payable on the fifteenth of the month. The tenant stated and the landlord agreed that the tenant has paid rent on August 15, 2008 and the next rent is due on September 15, 2008. Since the notice was issued to the tenant on July 28, 2008 as per section 49 (2) (b), the effective date of the end of the tenancy is the day before the day in the month that the rent is payable. Accordingly, the effective date of the end of tenancy should be October 14, 2008.

The rental suite is located in the basement of the landlord's home and the landlord lives in the upper suite. The landlord testified that he intends to carry out major repairs to the washroom of his suite which will involve dismantling the washroom and rendering it unusable. Since there is only one washroom in his suite, he will need to use the facilities in the basement while the repairs are being done. Hence, it is the landlord's intention to occupy the basement for his own use.

The tenant is making the following claims:

- \$ 700.00 as compensation for ending tenancy for landlord use.
- \$ 50.00 for the filing fee for this application.

Analysis

Based on the notice to end tenancy for landlord's use of property and pursuant to section 51 of the *Residential Tenancy Act*, I find that the tenant is entitled to receive from the landlord an amount that is the equivalent of one month's rent in the amount of \$ 700.00. However pursuant to section 51 (2) (b), if the rental unit is not used for the above stated purpose for at least six months, beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent to double the monthly rent payable.

I also find that the tenant is entitled to \$25.00 which is half the filing fee of as part of his dispute is with regard to the effective date of the notice and I find that the notice to end tenancy needs to be amended to incorporate the effective date of October 14, 2008 as per the tenant's claim.

Pursuant to section 51 (1) of the *Residential Tenancy Act*, a tenant may withhold the authorized amount from the last month's rent. Pursuant to section 67 of the *Residential Tenancy Act*, I am issuing a formal order for payment to the tenant. This order may be filed in the Small Claims Court and enforced as an order of that Court.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55(1), upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession with an effective date of October 14, 2008. Should the tenant fail 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.

Conclusion

- An order in the amount of \$ 725.00 is issued to the tenant.

- An order of possession is issued to the landlord for October 14, 2008

September 12, 2008

Date of Decision