



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR MNR FF
For the tenants: ERP RP CNC LRE RR FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the "Act").

The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee.

The tenants applied to cancel a Notice to End Tenancy for Cause, for an order for the landlord to make emergency repairs for health or safety reasons, to make repairs to the unit, site or property, to suspend or set conditions on the landlord's right to enter the rental unit, authorization to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover the filing fee.

The tenants and the landlord attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. The parties confirmed that they both received evidence packages from the other party prior to the hearing and that they had the opportunity to review the evidence prior to the hearing.

Preliminary and Procedural Matter

During the hearing, the tenants confirmed they were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on November 6, 2012 and did not dispute that Notice or pay rent within five days of receiving that Notice. Based on section 46 of the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice which was November 19, 2012. As a result, the tenants' application is **dismissed in full, without leave to reapply**, as the tenants' claims are

now moot, given that the tenancy ended November 19, 2012. As the tenants are currently overholding, the settlement agreement documented below will address unpaid rent for November and December 2012 and the order of possession sought by the landlord.

Settlement Agreement

During the hearing, the parties agreed to settle the remaining matters, on the following conditions:

1. The tenancy will end on **December 15, 2012 at 1:00 p.m.** and the landlord will receive an order of possession effective December 15, 2012 at 1:00 p.m.
2. The parties agree that the tenants owes the landlord **\$625.00** comprised of \$300.00 for unpaid rent for November 2012, and \$325.00 for unpaid rent until December 15, 2012.
3. The landlord agrees to waive the \$50.00 filing fee.
4. The landlord continues to hold a security deposit of \$325.00 and the parties agree that the landlord may retain the full security deposit of \$325.00 towards the \$625.00 in unpaid rent, resulting in a balance owing by the tenants in the amount of **\$300.00**.
5. The tenants agree to pay the landlord \$300.00 by **December 13, 2012** by 4:00 p.m.
6. Should the tenants fail to pay the landlord, the landlord is granted a monetary order pursuant to section 67 of the *Act* in the amount of **\$300.00, which will be of no force or effect if** the amount owing has been paid by the tenants in accordance with #5 above.
7. The landlord withdraws her application as part of this settlement agreement.

This settlement agreement was reached in accordance with section 63 of the *Residential Tenancy Act*.

Conclusion

I grant the landlord an order of possession effective December 15, 2012 at 1:00 p.m. The tenants must be served with the order of possession. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I authorize the landlord to retain the full security deposit of the tenants in the amount of \$325.00 and I grant the landlord a monetary order for the balance owing to the landlord

in the amount of **\$300.00**, which will be of no force or effect if the amount owing has been paid in accordance with the above terms.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 03, 2012

Residential Tenancy Branch