



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, FF, O

Introduction

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

- a monetary order for \$5,000.00 in compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72; and
- other unspecified remedies.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord confirmed that the landlord received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on December 28, 2012. I am satisfied that the tenant served this hearing package and the parties served one another with their evidence packages in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award against the landlord? Should any orders be issued against the landlord for repairs or anything else associated with this tenancy? Is the tenant entitled to recover his filing fee from the landlord?

Background and Evidence

This one-year fixed term tenancy agreement commenced on December 1, 2012. Monthly rent for this basement suite in a three-unit rental property is set at \$1,050.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$525.00 security deposit paid on November 9, 2012.

The tenant's application for a monetary award of \$5,000.00 was for his family's loss of quiet enjoyment of the rental property. The tenant and his wife provided oral and written evidence to support their claims that there are ongoing noises emanating from the

furnace that cause them serious disruption in their basement rental unit. Their claim also included their loss of quiet enjoyment due to noise stemming from the upstairs tenants, cooking smells from the upstairs rental unit that they find offensive, and the landlord's alleged failure to provide them with properly functioning facilities and services that they expected to receive when they entered into this tenancy agreement.

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 settle the issues in dispute arising out of this tenancy under the following final and binding terms:

1. Both parties mutually agreed to end this tenancy by March 31, 2013, by which time the tenant(s) will have vacated the rental premises.
2. The landlord agreed to sign a Mutual End to Tenancy Agreement to take effect by February 28, 2013, if the tenant notifies the landlord in writing before February 1, 2013 that the tenant has found suitable alternate accommodations elsewhere that will enable the tenant(s) to vacate the rental unit before March 1, 2013.
3. The landlord agreed to not pursue any monetary claim that the landlord may have to monthly rent from this fixed term tenancy for amounts that may be owed for periods following the date when this mutual end to tenancy takes effect.
4. The landlord agreed to retain a licensed electrician who will inspect, and if necessary conduct repairs, to the electrical system by February 15, 2013, so as to enable the operation of heaters by the tenant in the rental unit without causing problems to the electrical supply to the rental unit.
5. The tenant agreed to withdraw his application for dispute resolution, as this tenancy will be ending shortly.
6. Both parties agreed that the terms of this settlement agreement constituted a final and binding resolution of all issues currently under dispute arising out of this tenancy.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the tenant does not vacate the rental premises in accordance with their agreement. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: January 24, 2013

Residential Tenancy Branch

