



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an Order of Possession for unpaid rent and utilities pursuant to section 55;
- 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;
- 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 their filing fee for this application from the tenant pursuant to section 72.

The tenant's application naming the male landlord (the landlord) as the sole Respondent requested:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Preliminary Issues- Service of Documents

The tenant confirmed that he received the landlord's 10 Day Notice sent by the landlord by registered mail on February 11, 2014. The tenant also confirmed that he received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on March 6, 2014. The tenant also confirmed that he received copies of the landlords' written evidence package, although he said he received no photographs that I noted the landlords included in the package sent to the Residential Tenancy

Branch (the RTB). I find that the landlord served all of the above documents to the tenant in accordance with sections 88, 89 and 90 of the *Act*.

The tenant testified that he handed the landlord's spouse a copy of his dispute resolution hearing package on February 21, 2014. The landlord's spouse is one of the co-landlords in the Residential Tenancy Agreement (the Agreement) entered into written evidence by the landlords. The landlord testified that the landlords did not receive a copy of the tenant's dispute resolution hearing package and were unaware that the tenant had also applied for dispute resolution. I find that the best evidence before me in this regard is the direct sworn testimony from the tenant as to his hand delivery of his hearing package to the landlord's spouse. I am satisfied that the tenant served his hearing package to the landlord in accordance with the *Act*.

The tenant said that he sent a copy of his binder of written and photographic evidence to both the landlord and the RTB on March 6, 2014. He testified that the package of this evidence sent to the RTB was returned by Canada Post due to some apparent difficulty in the address he provided. He said that he attempted to hand deliver this package to the RTB after it was returned, but was unable to do so before the RTB office closed a number of times. The RTB received this binder of evidence on the afternoon before this hearing. The landlord denied having received any written or photographic evidence from the tenant. The tenant said that another tenant witnessed him send the two evidence packages to the landlord. His witness testified that he was present when the tenant sent his written evidence package to the RTB and the landlord. I found the witness' sworn testimony of somewhat limited value as he changed his mind as to when he watched this package mailed from February 6, 2014 to March 6, 2014 at the tenant's apparent prompting. However, I am satisfied that the tenant's written and photographic evidence was submitted to the landlord and the RTB.

Issues(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession? Are the landlords entitled to a monetary award for unpaid rent utilities and losses arising out of this tenancy? Is the tenant entitled to a monetary award for damage or losses in the value of this tenancy? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are either of the parties entitled to recover their filing fees for their applications from one another?

Background and Evidence

This periodic tenancy began on October 1, 2013. Monthly rent is set at \$1,400.00 plus utilities. The landlords continue to hold the tenant's \$600.00 security deposit paid on October 1, 2013.

The landlords issued the 10 Day Notice for unpaid rent of \$1,400.00 owing for February 2014, and \$329.62 for unpaid utilities owing as of January 3, 2014. The landlords' application for a monetary award of \$4,796.23 included a request for unpaid rent and utilities owing from February and March 2014, and anticipated losses of rent and utilities for April 2014. The tenant confirmed that he has not paid any rent or utilities for February, March or April 2014.

The tenant's application for a monetary award of \$4,500.00 was for the loss in value of his tenancy and for losses arising out of the landlords' actions. The tenant maintained that the landlords have not repaired a fence that they committed to repair when he entered into this Agreement. He submitted that he incurred losses due to an accident when his pregnant dog escaped from the backyard of this rental property due to the landlord's negligence in effecting repairs. The tenant also requested a monetary award for the loss in value caused by a trash-strewn backyard, the landlord's failure to provide a functioning washer, and other issues, including various wiring and heating problems.

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 resolve all issues arising out of their applications and this tenancy with the exception of the security deposit for this tenancy under the following final and binding terms of settlement:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on May 1, 2014, by which time the tenant will have vacated the rental unit.
2. The tenant agreed to pay the landlord \$3,000.00 by 5:00 p.m. on April 2, 2014.
3. The tenant agreed that if he does not abide by his commitment to pay the landlord \$3,000.00 by 5:00 p.m. on April 20, 2014, he will pay the landlord a total of \$3,500.00 by 5:00 p.m. on April 28, 2014.
4. The landlord agreed that the monetary terms as outlined above in this settlement agreement constituted a final and binding resolution of the landlords' application for dispute resolution.

5. The tenant agreed that the monetary terms of this settlement agreement constituted a final and binding resolution of his application for dispute resolution.
6. Both parties agreed that the tenant's security deposit remains in place and is subject to the usual terms of the *Act* with respect to the release or withholding of that deposit.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties.

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 landlords if the tenant does not vacate the rental premises in accordance with their agreement. The landlords are provided with these Orders in the above terms and the tenant must be served with this Order in the event that the tenant does not vacate the premises by the time and date set out in their agreement. 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.

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlords' favour in the amount of \$3,500.00. I deliver this Order to the landlords in support of the above agreement for use **only** in the event that the tenant does not abide by the terms of the above settlement. The landlords are provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible after a failure to comply with the terms of the above settlement agreement. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court. As discussed at the hearing, the tenant's security deposit remains in place and the usual terms of the *Act* with respect to the release or withholding of that deposit remains in effect.

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: April 11, 2014

Residential Tenancy Branch

