



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; 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 and to ask questions of one another. The tenant confirmed that the landlord handed him a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on August 26, 2012. The landlord confirmed that the tenant handed him a copy of the tenant's dispute resolution hearing package on September 1, 2012. I am satisfied that the above documents were served to one another in accordance with the *Act*.

At the hearing, the landlord requested an end to this tenancy on the basis of the 1 Month Notice and an Order of Possession to take effect on October 31, 2012.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant gave undisputed evidence that he first commenced this periodic tenancy on or about July 1, 2003. The landlord testified that he was uncertain as to the date that the tenant first occupied the rental unit because the landlord only assumed ownership of this property on July 31, 2012. Although the landlord said that he drafted a new residential tenancy agreement for the tenant's signature, the landlord did not receive a signed copy of that agreement from the tenant. No written and signed tenancy agreement is currently in place for this tenancy.

The parties agreed that monthly rent is currently set at \$1,200.00, payable in advance on the first of each month. The parties agreed that the tenant paid a \$600.00 security deposit towards this tenancy. The tenant gave undisputed evidence that he paid this amount at the commencement of his tenancy on or about July 1, 2003. The landlord had no details to contradict the tenant's claim that he paid the security deposit on or about July 1, 2003.

The landlord testified that he refused the tenant's offer to pay his October 2012 rent, pending the outcome of this hearing. He testified that if this tenancy were to continue, he would require the tenant to pay his October 2012 rent immediately.

Analysis

Pursuant to section 63 of the *Act*, the dispute resolution officer 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.

1. Both parties agreed that this tenancy will end by 1:00 p.m. on November 30, 2012, by which time the tenant and anyone residing there will have vacated the rental premises.
2. Both parties agreed that the tenant will pay and the landlord will receive the tenant's October 2012 rental payment by 9:00 p.m. on October 3, 2012.
3. Both parties agreed that this settlement agreement constituted a final and binding settlement of all issues currently in dispute arising out of this tenancy and that neither party will commence a new application for dispute resolution for the issues currently in dispute.

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 **only** if the tenant does not comply with the terms of their settlement agreement **and** fails to vacate the rental premises in accordance with their agreement. This Order of Possession takes effect by 1:00 p.m. on November 30, 2012. 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.

Pursuant to section 62 of the *Act*, for the sake of clarity and because no signed written residential tenancy agreement is in place for this tenancy, I order that the date of the

tenant's payment of his \$600.00 security deposit for this tenancy is set at July 1, 2003, unless the landlord can provide definitive proof that this is not the case.

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: October 03, 2012

Residential Tenancy Branch