



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent 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 his filing fee for this application from the tenant 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 cross-examine one another. The tenant confirmed that she was handed a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on December 27, 2012 by the landlord's process server. The landlord entered into written evidence a copy of his process server's written statement with respect to his service of the 10 Day Notice to the tenant on December 27, 2012 at 8:20 a.m. The tenant confirmed that she was handed a copy of the landlord's application for dispute resolution on December 28, 2012. I am satisfied that the landlord served the above documents to the tenant in accordance with the *Act*.

The landlord entered into oral and written evidence information that the tenant has subsequently paid all amounts owing resulting from this tenancy to date. The landlord withdrew all portions of his application for dispute resolution, but for his application for an Order of Possession based on the tenant's failure to pay rent within 5 days of receiving the landlord's 10 Day Notice. All segments of the landlord's application are withdrawn with the exception of his application for an Order of Possession for unpaid rent.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

This tenancy commenced as a one-year fixed term tenancy on March 1, 2009. At the expiration of the initial term, the tenancy converted to a periodic tenancy. Monthly rent

is set at \$1,950.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$1,000.00 security deposit paid on February 26, 2009.

The landlord entered undisputed written evidence that he issued the 10 Day Notice for the tenant's failure to pay \$4,664.00 in unpaid rent owing as of December 2, 2012. The landlord testified that he had received a total of \$1,186.00 from the B.C. Ministry of Social Development applied to this tenancy for the three months of October, November and December 2012. He entered into written evidence a copy of a January 6, 2013 letter in which he advised the tenant that he had accepted the tenant's payment for the use of the home provided to him on January 5, 2013. However, in that letter, he informed the tenant that he wanted her to vacate the premises by January 31, 2013, as his acceptance of her payment was not a reinstatement of her tenancy. He also entered into written evidence a copy of the tenant's January 5, 2013 cheque in the amount of \$5,864.00. This cheque paid the landlord the \$4,664.00 identified as owing in his 10 Day Notice plus a \$1,200.00 payment for January 2013. The parties confirmed that they had agreed to reduce the tenant's payment for January 2013 as a result of a recent flooding incident in the rental unit.

The tenant's advocate noted that this 64-year old tenant had mental health issues and was still suffering from post traumatic stress syndrome arising from a number of issues including the recent loss of her spouse. The tenant and the advocate confirmed that the tenant is searching for alternate accommodation, but this may be difficult to obtain on short notice. The tenant, her advocate and her witness (who had previously acted as the tenant's personal advocate) did not dispute the landlord's claim that the tenant did not pay all of the rent identified as owing in the 10 Day Notice within 5 days of receiving that Notice. The tenant said that she made every effort to pay her rent, but had to wait until an East Coast insurance company forwarded her a sizeable cheque in order to do so. Although the tenant was advised that this cheque had been approved and would be issued, she testified that she did not receive the cheque from the insurance company until January 5, 2013. The tenant made immediate arrangements to provide the landlord with the \$5,864.00 cheque as soon as she received it. The tenant, her advocate and her witness asked for consideration of the tenant's circumstances in reaching a decision with respect to the landlord's request for an Order of Possession.

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 the following final and binding resolution of all issues in dispute arising out of this tenancy and the landlord's application under the following terms:

1. The tenant agreed to pay \$1,950.00 to the landlord by February 1, 2013, in order to allow the tenant to remain in the rental premises until February 28, 2013.
2. Both parties agreed that if the tenant abides by the above monetary terms of this settlement agreement, this tenancy will continue until 1:00 p.m. on February 28, 2013, by which time the tenancy will end and the tenant will have vacated the rental unit.
3. Both parties agreed that if the tenant does not abide by the monetary terms of this settlement agreement that the tenancy will end by February 2, 2013, and the tenant will vacate the rental unit.
4. The landlord agreed to withdraw his application for a monetary award for unpaid rent owing for October, November and December 2012.
5. Both parties agreed that this settlement agreement constituted a final and binding resolution of all issues currently under dispute arising out of this tenancy and the landlord's application.

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

In coming to this settlement agreement, the tenant and her advocate acknowledged that this resolution was not their preferred outcome. However, the tenant entered into this settlement agreement because it enabled her additional time to seek alternate accommodations. The tenant and her advocate recognized that the tenant would not likely have additional time beyond January 31, 2013, if I were asked to make a decision based on the tenant's undisputed failure to comply with the requirement whereby if the tenant does not pay all of the unpaid rent within five days of receiving the 10 Day Notice the tenant is considered to have accepted the landlord's effective date to end the tenancy (as per section 46(5) of the *Act*).

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Orders of Possession to be used by the landlord if the tenant does not comply with the terms of their agreement **and** fails to vacate the rental premises in accordance with 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.

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 25, 2013

Residential Tenancy Branch

