



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55; and
- 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.

The tenant applied for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice pursuant to section 46; 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 cross-examine one another. Both parties agreed to amend their applications to reflect the spelling of the names outlined above. The tenant confirmed that he received the landlord's 10 Day Notice of April 26, 2013 that the landlord testified he posted on the tenant's door at 8:15 p.m. on April 26, 2013. The tenant confirmed that he received a copy of the landlord's dispute resolution hearing package after May 10, 2013. I am satisfied that the landlord has served the above documents in accordance with the *Act*.

The tenant testified that he sent the landlord a copy of his dispute resolution hearing package by registered mail on May 6, 2013. The tenant provided the Canada Post Tracking Number to confirm this registered mailing and testified that his package has been returned to him by Canada Post as undelivered. The landlord testified that he was unaware of the tenant's application for dispute resolution. In accordance with sections 89 and 90 of the *Act*, I find that the landlord is deemed to have been served with the tenant's application on the fifth day after its registered mailing, May 11, 2013.

At the commencement of this hearing, both parties testified that a decision was made by a Dispute Resolution Officer (DRO) delegated authority under the *Act* on October 19, 2012. In that decision (the original decision), another arbitrator issued a 5-day Order of Possession to the landlord and a monetary Order in the amount of \$10,100.00. The parties also agreed that the tenant has applied for judicial review of the other arbitrator's decision. They also agreed that the tenant has obtained a stay in the landlord's execution of the two Orders issued by the other arbitrator on October 9, 2012, until such time as the Supreme Court of British Columbia (the Court) has made a final determination with respect to the tenant's application for judicial review.

Both parties confirmed that the landlord's current application for a monetary Order for unpaid rent rests on unpaid rent that the landlord maintains has become owing subsequent to the matters considered by the other arbitrator in October 19, 2012. I advised the parties that I cannot consider the circumstances that gave rise to the original decision or to the other arbitrator's Order of Possession or the monetary Order of \$10,100.00. Both the common law legal principle of *res judicata* and section 58(2)(c) of the *Act* prevent me from considering the matters that were before the other arbitrator and are currently before the Court. However, I am satisfied that the issues before me have occurred in the period following those matters included in the other arbitrator's decision, and, as such, are properly before me.

At the commencement of this hearing, I noted that there was no need to consider the tenant's application for more time to file his application to cancel the landlord's 10 Day Notice as I found that the tenant had applied within the time period allowed under the *Act*.

Issues(s) to be Decided

Should the landlord's 10 Day Notice of April 26, 2013 be cancelled? If not, is the landlord entitled to an Order of Possession for unpaid rent on the basis of the 10 Day Notice issued on April 26, 2013? Is the landlord entitled to a monetary award for unpaid rent and losses beyond that which was issued in the original decision?

Background and Evidence

This tenancy commenced initially as a fixed term tenancy on November 1, 2011. At the expiration of the first term on May 15, 2012, the tenancy continued as a periodic tenancy. Monthly rent is set at \$2,500.00, payable in advance on the 15th of each month, plus utilities. The landlord continues to hold the tenant's \$1,250.00 security deposit paid on October 26, 2011.

The landlord applied for a monetary Order of \$20,000.00 in unpaid rent that he claimed had become owing from October 2012 until the present. The tenant gave sworn testimony that he had not made his March 15, 2013 rent payment and had not made any other payments since then. The tenant testified that he owed \$8,000.00 to the landlord since October 2012, but would be able to pay amounts owing to him very soon. The parties agreed that the tenant has not paid anything towards the monetary Order issued on October 19, 2012, as he is awaiting the outcome of his judicial review application.

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 all issues in dispute between them.

Both parties agreed to the following final and binding settlement agreement to resolve all outstanding issues in dispute regarding this tenancy:

1. The tenant agreed to make a direct deposit payment into the landlord's account in the amount of \$10,000.00 by 5:00 p.m. on June 7, 2013.
2. The tenant agreed to make a direct deposit payment into the landlord's account in the amount of \$10,500.00 by 2:00 p.m. on July 2, 2013.
3. The tenant agreed to resume paying monthly rent as scheduled in the amount of \$2,500.00, as per the terms of his residential tenancy agreement, by July 15, 2013, and further committed to make future monthly payments after July 15, 2013, as per the terms of his residential tenancy agreement.
4. The landlord agreed that if the tenant abides by the monetary terms set out in the above-noted Points 1 and 2, the landlord will cancel all notices to end tenancy for unpaid rent that the landlord has issued to date and will not act to enforce any Orders of Possession issued to him, either on October 19, 2012 or pursuant to the current hearing.
5. The landlord also agreed that if the tenant complies with the monetary terms of the above-noted Point 1, the landlord will consider the tenant's \$10,000.00 payment completely satisfies the monetary Order issued on October 19, 2012, and the landlord will not make any further attempt to execute the monetary Order issued on October 19, 2012.

6. The tenant agreed to withdraw his outstanding application for judicial review before the Supreme Court of British Columbia if both parties have abided by the terms of this settlement agreement by July 3, 2013.
7. Both parties agreed that this tenancy ends if the tenant fails to abide by the monetary terms of either Points 1 or 2 as outlined above.
8. Both parties agreed that this settlement agreement constituted a final and binding resolution of all issues arising out of this tenancy at this time and that neither party will continue with or initiate any new applications for dispute resolution or arising out of issues currently under 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 monetary terms of Points 1 and 2 of their settlement agreement as outlined above. The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible after any failure to abide by the monetary terms of Points 1 or 2 of the above-noted settlement 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.

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlord's favour in the amount of \$10,500.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenant does not abide by the terms of Point 2 of the above settlement. The landlord is 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 Point 2 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.

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: May 31, 2013

Residential Tenancy Branch