



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pham & Doan Holding Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FF

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover her 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 discuss this application. The tenant confirmed that one of the landlords handed her the 10 Day Notice on August 6, 2013. The landlord who attended this hearing (the landlord) testified that the tenant handed the other landlord a copy of her dispute resolution hearing package on August 12, 2013. I am satisfied that the above documents were served to one another in accordance with the *Act*.

At the commencement of this hearing, I asked the parties if they had submitted any written evidence other than the 10 Day Notice provided to the Residential Tenancy Branch (the RTB) with the tenant's application for dispute resolution. The landlord confirmed that the landlords had not submitted any written evidence for this hearing, although he noted that the landlords have applied for dispute resolution seeking a monetary award for unpaid rent and authorization to retain the tenant's security deposit. Both parties confirmed that a hearing of the landlord's application is scheduled for November 13, 2013.

The tenant testified that she handed a copy of her additional written evidence to the RTB on Thursday, September 12 or 13, 2013. She testified that she had not provided a copy of her additional written evidence to the landlord. I advised that I had not received this written evidence prior to this hearing. I also advised the parties that I could not consider written evidence that had not been provided to the landlord by the tenant. As such, I noted that the only written evidence I would be able to consider with respect to

this hearing was the 10 Day Notice and the minimal information included in the Details of the Dispute in the tenant's application for dispute resolution.

At the commencement of the hearing, the landlord made an oral request for an Order of Possession if the tenant's application were dismissed.

Issues(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession? Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

The tenant moved into her existing rental unit on or about July 2, 2013, after another of the landlords' rental units where she was previously living was damaged by a flooding incident. Monthly rent at the original rental unit was set at \$650.00, payable in advance on the first of each month. The landlord testified that the monthly rent at the tenant's current rental unit is set at \$900.00. The tenant maintained that she should only be responsible for monthly rent of \$650.00, the amount of her original tenancy agreement with the landlords. The landlord gave undisputed sworn oral testimony that the landlords continue to hold the tenant's \$425.00 security deposit for this tenancy.

The landlords' 10 Day Notice identified \$900.00 as owing for this tenancy as of August 1, 2013. Although the tenant maintained that she should not be held responsible for all \$900.00 for August 2013, she confirmed that she has not paid anything to the landlords following their issuance of the 10 Day Notice. She also confirmed that she has not received any order from an Arbitrator allowing her to reduce her rent for this tenancy.

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 engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to a final and binding resolution of all issues currently in dispute between them under the following terms:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on September 19, 2013, by which time the tenant will have vacated the rental unit.
2. The landlord agreed to withdraw the landlords' outstanding application for a monetary award for unpaid rent, currently scheduled for hearing on November

13, 2013, and to not pursue or initiate any further application(s) for a monetary award from the tenant arising out of this tenancy, if the tenant abides by the terms of this settlement agreement.

3. The landlord agreed to return the tenant's security deposit to the tenant in full on September 19, 2013, if there is no damage arising out of this tenancy and if the tenant abides by the terms of this settlement agreement.
4. Both parties agreed that 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. The landlord is 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.

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: September 17, 2013

Residential Tenancy Branch

