



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, CNR, OLC, 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;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover their 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 cross-examine one another and to discuss their applications with one another. The tenants were represented by an agent who was familiar with the details of this tenancy and who gave sworn oral testimony that the tenants had given her their full authorization to act on their behalf, including their authorization to enter into settlement arrangements with the landlord.

The landlord testified that he handed the female tenant the 10 Day Notice on November 2, 2013, at which time the female tenant signed for receipt of that Notice. The tenants' agent (the agent) confirmed that the tenants received the 10 Day Notice in the method and on the date stated by the landlord. The landlord testified that he handed the female tenant copies of the landlord's dispute resolution hearing package on November 13, 2013. The agent confirmed that both tenants had received a copy of the landlord's dispute resolution hearing package as described by the landlord. I am satisfied that the tenants have been served with the above documents by the landlord.

At the hearing, the landlord testified that he had not provided copies of his written evidence to the tenants. The agent confirmed that neither tenant received any written evidence from the landlord, although they both had received his 10 Day Notice. Since the landlord did not serve his evidence to the tenants in accordance with the *Act*, I advised the parties that I could not consider the written evidence he had provided to the Residential Tenancy Branch (the RTB).

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the 10 Day Notice? Is the landlord entitled to a monetary award for unpaid rent? Are either of the parties entitled to recover their filing fees from one another? Should any other orders be issued with respect to this tenancy?

Background and Evidence

The parties agreed that this periodic tenancy began approximately six years ago on the basis of an oral agreement between the parties, in 2007. Monthly rent is currently set at \$750.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$350.00 security deposit paid when the tenancy began.

The landlord's 10 Day Notice identified \$1,330.00, as owing as of November 1, 2013. Although the landlord cited November 2, 2013, as the effective date for the end to the tenancy in the 10 Day Notice, this date was automatically corrected to November 12, 2013, the first day that this Notice could have taken effect.

The landlord entered undisputed sworn testimony that he received \$650.00 in payment towards the amount owing on November 26, 2013. He also testified that he has received the \$375.00 payment from the female tenant for her share of the December 2013 rent. He testified that at the time of this hearing, \$1,055.00 remained owing. He also requested the recovery of his \$50.00 filing fee from the tenants.

In the Details of the Dispute in the tenants' application for dispute resolution, the male tenant maintained that he had attempted to pay rent owing on or around October 26, 2013. He also cited issues around the maintenance of the rental premises.

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. The agent

once more gave sworn testimony that she was fully authorized by the tenants to enter into these discussions with the landlord and to complete a settlement agreement on their behalf at this hearing.

Both parties agreed to settle all issues currently under dispute between the parties on the basis of the following final and binding settlement agreement:

1. The tenants agreed to pay \$1,105.00 to the landlord by 5:00 p.m. on Monday, December 13, 2013.
2. Both parties agreed that if the tenants abide by the above-noted monetary terms of this settlement agreement that this tenancy will end by 1:00 p.m. on January 31, 2014, by which time the tenants and any occupants will have vacated the rental unit.
3. Both parties agreed that in the event that the tenants do not abide by the monetary terms of the above-noted provisions of the settlement agreement, the landlord will be issued a 2-day Order of Possession which he can use in that event if necessary should the tenants fail to vacate the rental unit within 2 days of being served with that Order.
4. The tenants committed to pay their January 2014 rent in accordance with the terms of their existing tenancy agreement.
5. Both parties agreed that in the event that the tenants do not pay their January 2014 rent by the end of the day on January 1, 2014, the landlord can also take possession of the rental unit by using the 2-day Order of Possession attached to this decision, and the tenants committed that they will vacate the rental unit within 2 days of being served with that Order.
6. Both parties agreed that the terms of this settlement agreement constituted a final and binding resolution of all issues currently arising out of their applications and this tenancy.

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 **only** if the tenants do not comply with the monetary terms of their agreement **and** fail to vacate the rental premises in accordance with their agreement. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order in the event that the tenants do not vacate the premises in accordance with their agreement. Should the tenant(s) fail to comply with this Order, these Orders may be filed and enforced as an Order of the Supreme Court of British Columbia.

I provide the landlord with an Order of Possession effective January 31, 2014, that may be served at any time and in any event.

I also provide the landlord with a conditional Order of Possession that is effective two days after service which may be served upon the tenants if and only if the tenants do not pay the landlord pursuant to parts 1 and/or 5 of their mutual agreement, as recorded in the Analysis section of this decision. For added clarity, this conditional Order of Possession may be served December 13, 2013, or later, **if** the tenants do not pay the landlord \$1,105.00 by 5:00 p.m. on December 13, 2013, or by January 2, 2014, **if** the tenants do not pay rent that becomes due on January 1, 2014 by the end of the day on January 1, 2014.

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 \$1,105.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenants do not abide by the terms of the above settlement. The landlord is provided with these Orders in the above terms and the tenant(s) 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(s) 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: December 09, 2013

Residential Tenancy Branch

