



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, OPC, MNR, FF

Introduction:

This hearing was convened in response to cross applications.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside the Notice to End Tenancy for Unpaid Rent, for more time to set aside a Notice to End Tenancy, for an Order requiring the Landlord to make emergency repairs, to recover the cost of emergency repairs, for an Order requiring the Landlord to provide services or facilities required by law, for authority to reduce the rent for repairs, services, or facilities agreed upon but not provided, and to recover the fee for filing an Application for Dispute Resolution.

At the outset of the hearing the Tenant withdrew the application to set aside the Notice to End Tenancy for Unpaid Rent, for more time to set aside a Notice to End Tenancy, for an Order requiring the Landlord to make emergency repairs, and for an Order requiring the Landlord to provide services or facilities required by law, as they are no longer residing in the rental unit.

The female Tenant stated that the Application for Dispute Resolution and the Notice of Hearing were personally served to the Landlord on February 08, 2014. The Landlord acknowledged receipt of these documents and I therefore find that they were served in accordance with section 89 of the *Residential Tenancy Act (Act)*.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, an Order of Possession for Cause, a monetary Order for unpaid rent, and to recover the fee for filing an Application for Dispute Resolution. At the outset of the hearing the Landlord withdrew the application for an Order of Possession.

The Landlord stated that on February 25, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to each Tenant at the rental unit, via registered mail. The Landlord submitted cited two Canada Post tracking numbers that corroborates this statement.

The Landlord and the Tenant agree that on February 27, 2014 the Landlord gave the male Tenant two notifications of registered mail, which had been delivered to the residential complex. The female Tenant stated that the Tenant did not pick up the mail that was sent to them by registered mail, in part, because they were in process of moving from Aldergrove to Langley and, in part, because they mistakenly believed that it was something that had been sent to them by a relative.

On the basis of the undisputed evidence, I find that the Tenant was served with the Landlord's Application for Dispute Resolution in accordance with section 89 of the *Residential Tenancy Act (Act)*. A party cannot avoid service of documents by not picking up registered mail.

In these circumstances, I determined that it was appropriate to proceed with the Landlord's Application for Dispute Resolution. In reaching this conclusion, I was heavily influenced by the fact that the essence of the Landlord's claim is that she is owed rent and by the fact that the female Tenant acknowledged that some rent is due. I could not, therefore, conclude that the Tenant would be unduly prejudiced by proceeding with the Landlord's claim as there is little evidence that the Tenant could present that would not be presented in support of the Tenant's claim to set aside the Notice to End Tenancy for Unpaid Rent, the Tenant's claim for compensation for the cost of emergency repairs, and the Tenant's claim to reduce the rent for repairs, services, or facilities agreed upon but not provided.

The parties were advised that if during the hearing it became apparent that the Tenant needed additional time to present a response to the Landlord's claim, an adjournment would be considered.

Both parties were represented at the hearing. The Tenant dialed into the teleconference shortly after the scheduled start time for the hearing, although for some unknown reason she could not be heard for approximately five minutes. I was aware of her presence when she dialed into the teleconference and she advised that she could hear what was being said while she was connected to the teleconference.

Issue(s) to be Decided:

Is the Landlord entitled to compensation for unpaid rent and is the Tenant entitled to compensation for making emergency repairs made and/or for living with deficiencies with the rental unit?

Background and Evidence:

After considerable discussion about the merits of both claims, the Landlord and the Tenant agreed to settle these disputes under the following terms:

- The Tenants will pay the Landlord \$200.00 by March 31, 2014
- The Tenants will pay the Landlord \$300.00 by April 30, 2014
- The Tenants will pay the Landlord \$300.00 by May 31, 2014
- The Landlord will be granted a monetary Order that is immediately enforceable if the Tenants fail to meet any of these payments on the due dates
- The Tenants will remove all of their personal property and furniture from the rental unit by March 31, 2014
- In the event the Tenants do not remove all of their personal property and furniture from the rental unit by March 31, 2014, the Landlord may file another Application for Dispute Resolution seeking compensation for the cost of moving and storing the property
- With the exception of the Landlord seeking compensation for the cost of moving and storing property if it is not moved by March 31, 2014, neither party will file another Application for Dispute Resolution in relation to this dispute
- Both parties retain the right to proceed with claims not related to these Applications for Dispute Resolution, if those claims have already been filed with the Residential Tenancy Branch.

Analysis

The terms of this settlement agreement were reviewed with the Landlord and Tenant on at least five occasions. The Landlord, the female Tenant, and the male Tenant repeatedly indicated that they understood the terms of the settlement agreement. On the basis of our communications during the hearing, I am satisfied that all parties understood the terms of the settlement agreement.

The Landlord clearly and unequivocally indicated that she agreed with the terms of the settlement agreement. On the basis of her responses, I am satisfied that she mutually agreed to settle the disputes under the aforementioned terms.

On several occasions the female Tenant appeared hesitant when asked if she agreed to the terms of the tenancy agreement. She was repeatedly advised that she was under no obligation to settle this matter and that she could decline any settlement offer proposed by the Landlord, in which case I would adjudicate the matter, or she could propose a counter offer.

On several occasions she stated that she felt “pressured” to accept the offer. When asked to explain why she felt pressured she indicated that she understood she did not have to accept the offer but she did not want to risk having to pay more than \$800.00 if the matter was decided in favour of the Landlord. She was advised that I have not reached any conclusion in the matter but that there is a possibility that the Landlord would be entitled to compensation for rent for February of 2014, given that rent had not been paid and the Tenant lived in the rental unit for the majority of the month. She was also advised that there is a possibility that the Landlord would be entitled to

compensation for lost revenue for March of 2014, given that the Tenant had left a large amount of furniture in the rental unit.

She was advised that I could not conclude that the parties had settled the matter unless I was convinced that she was mutually agreeing to settle these disputes. After much discussion the female Tenant assured me that she was agreeing to the terms of the settlement. On the basis of her responses, I am satisfied that she mutually agreed to settle the disputes under the aforementioned terms.

On several occasions the male Tenant stated that he was not pleased with the terms of the settlement agreement, although he clearly indicated that he was mutually agreeing to settle the matter under those terms. On the basis of his responses, I am satisfied that he mutually agreed to settle the disputes under the aforementioned terms.

Conclusion

On the basis of the settlement agreement, I grant the Landlord a monetary Order in the amount of \$800.00. This Order may be served to the Tenant anytime after April 01, 2014 if the Tenant fails to pay \$200.00 to the Landlord by March 31, 2014. This Order may be served to the Tenant anytime after May 01, 2014 if the Tenant fails to pay \$300.00 to the Landlord by April 30, 2014. This Order may be served to the Tenant anytime after June 01, 2014 if the Tenant fails to pay \$300.00 to the Landlord by May 31, 2014.

In the event that the Tenant does not comply with payment plan outlined in the terms of the settlement agreement the Order may be served on the Tenant on the aforementioned dates, filed with the Province of British Columbia Small Claims Court, and enforced as an Order of that Court. At the time of enforcement, the Tenant will have the right to ask that the Order be reduced by any amounts that have been paid.

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: March 26, 2014

Residential Tenancy Branch

