



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ELK VALLEY FAMILY SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

<u>Dispute Codes</u>	Landlord:	OPR, OPC, MNR
	Tenant:	CNC, CNR, O

Introduction

On April 28, 2014 a hearing took place in response to an Application for Dispute Resolution (the "Application") made by the Tenant to cancel a notice to end tenancy for cause and for 'Other' issues of which none were identified by the Tenant.

The hearing proceeded on April 28, 2014 with the appearance of the Tenant and the Landlord as well as an agent for the company named on the Tenant's Application. At the start of the hearing no issues were raised by the parties in relation to the Notice of Hearing documents for this hearing but the Tenant submitted that the Landlord's written evidence had not been served on time and that she needed more time to consider it and respond accordingly. After determining that the Landlord had served the Tenant with late evidence, the Landlord consented to the adjournment of the hearing as they were not willing to move forward without the consideration of their written evidence.

The hearing was subsequently adjourned to reconvene on June 19, 2014. However, in the interim time period the Landlord had served the Tenant with another one month notice to end the tenancy for the reason that the Tenant had been repeatedly paying rent late and a notice to end tenancy for unpaid rent for May, 2014.

Following the receipt of these Notices, the Tenant made another Application to dispute the above notices on May 12, 2014 and the Landlord made a cross Application for an Order of Possession and a Monetary Order for unpaid rent on May 14, 2014. These two Applications were then scheduled to be heard with me on July 10, 2014.

During the reconvened hearing, I explained to the parties that pursuant to Section 73 of the Act, I would be dealing with all three Applications in this hearing as they were all sufficiently related. I explained to the parties that I would first focus my attention on the notice to end tenancy for unpaid rent as follows.

Background and Evidence

The Landlords and Tenant agreed that the monthly portion of the rent payable by the Tenant was in the amount of \$285.00 on the first day of each month. The remainder of the \$500.00 total rent was payable by a third party organisation. No security deposit was paid by the Tenant at the start of the tenancy.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on May 5, 2014. The Notice was provided as evidence for the hearing and shows an expected vacancy date of May 19, 2014 due to \$285.00 of unpaid rent that was due on May 1, 2014. The Landlord also provided a 'Proof of Service' document which was signed by a witness confirming that it had been served to the Tenant by attaching it to the Tenant's rental unit address.

The Tenant stated that she received the Notice on May 5, 2014 and disputed it by making an Application on May 12, 2014. The Tenant explained that she had provided the Landlord with a post dated cheque after being issued with the Notice but submitted that she had not paid June, 2014 rent.

The Landlord testified that she had received a post dated cheque from the Tenant after serving the Notice which was post dated for May 12, 2014 but the cheque was returned due to insufficient funds.

The Tenant was explained the provisions of Section 26(1) of the Act in relation to her obligations to pay rent to the Landlord under a tenancy agreement. The Tenant was also explained about the timelines stipulated by Section 46(4) of the Act which requires a Tenant to pay the amount of rent on the Notice or dispute the Notice within five days of receipt of the Notice.

As the Tenant confirmed receipt of the Notice on May 5, 2014 the Tenant would have had to make an Application to dispute the Notice or pay the amount outstanding on the Notice by May 10, 2014, neither of which she did, instead making her Application outside of the statutory time limits. Furthermore, the Tenant has also not paid for June, 2014 rent.

The Tenant was informed that based on the evidence above the Landlord would be entitled to an Order of Possession and that this would be effective immediately as the effective date on the Notice had passed.

However, the Landlord and Tenant decided to work with each other on some terms and conditions that would see the tenancy end amicably through a settlement agreement.

Settlement Agreement

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 end the tenancy under the following terms and conditions:

1. The Tenant and Landlords agreed to end the tenancy at **1:00 pm on July 31, 2014.**
2. The Tenant agreed to pay rent to the Landlord in the followings amounts:
 - \$570.00 rent for May and June, 2014 will be paid by the Tenant on June 26, 2014.
 - Rent for July, 2014 will be paid to the Landlord in the amount of \$285.00 on July 2, 2014.
3. The above amounts will be paid by the Tenant to the Landlord on these dates by the Tenant giving these payments to the Landlord at the Landlord's Fernie office in the form of a money order or cash.
4. The Landlord will issue the Tenant with a receipt for payments made.
5. The Tenant committed to there being no further issues in relation to the initial one month notice that was served and the Tenant agreed that "SH", who is alleged to be a problem person in this tenancy, will no longer frequent the rental unit or cause disturbance that would give rise to the ending of the tenancy prior to the agreed date.
6. The Tenant agreed to the Landlord being issued with a conditional Order of Possession effective two days after service on the Tenant. However, the Landlord agreed that the Order of Possession will not be enforced unless the Tenant fails to vacate the rental suite on July 31, 2014, fails to pay rent on the agreed above dates in the manner recorded, or there is disturbance created by the Tenant or the Tenant's guests.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the Landlord which allows the Landlord to enforce the order if the above terms and conditions are not met. This order is effective two days after service on the Tenants and is final and binding on the parties.

As the tenancy will end on the basis of the notice to end tenancy for unpaid rent or utilities, I did not make any legal findings or hear any evidence in relation to the notices to end tenancy for cause as these are now moot. Therefore, the Tenants Application to cancel the notice to end tenancy for cause is dismissed.

As the Tenant committed to paying the outstanding rent associated with this tenancy, the Landlord's Application for a Monetary Order for the unpaid rent is dismissed. However, the Landlord is at liberty to apply for a Monetary Order for any unpaid rent that is outstanding at the end of the tenancy.

The three files relating to this tenancy are now closed and there is no requirement for the parties to appear for the July 10, 2014 hearing.

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: June 19, 2014

Residential Tenancy Branch

