



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord's agent ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent, dated September 11, 2014 ("10 Day Notice"), was personally delivered to the tenant's roommate, DZ, at the rental unit on September 11, 2014. Section 88(e) of the *Act* permits the landlord to serve the 10 Day Notice by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant. The landlord confirmed that he left the notice with an adult who was living with the tenant. The tenant testified that he received the 10 Day Notice on this date. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the 10 Day Notice on September 11, 2014.

The landlord testified that he served the tenant with the Application for Dispute Resolution hearing package ("Application") on October 23, 2014 via registered mail. He provided a Canada Post receipt and tracking number as proof of service, with his Application. The tenant testified that he received the Application. In accordance with

sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the Application on October 28, 2014, the fifth day after its registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord provided a copy of a written tenancy agreement with his Application and testified that this tenancy began on April 1, 2014, on a month-to-month basis. Rent is payable monthly in the amount of \$1,500.00 on the first day of each month. A security deposit in the amount of \$750.00 was paid by the tenant on March 14, 2014. The tenancy agreement was signed by the tenant and landlord on March 14, 2014. The tenant continues to currently reside in the rental unit.

The landlord provided a rent ledger with his Application, dated from March 14, 2014 to October 21, 2014, showing unpaid rent during this tenancy. Both parties agreed that rent had been paid in full until the end of October 2014. The landlord advised that although the tenant had paid rent late for September and October 2014, he had accepted the rent payments and reinstated the tenancy, as he did not accept the payments for "use and occupancy only" and did not issue any receipts in this regard. The landlord confirmed that the 10 Day Notice for unpaid rent for September 2014 had been cancelled, as rent had been paid in full for September 2014 and the tenancy was reinstated thereafter.

During the hearing, the landlord amended his Application, to seek unpaid rent for November 2014 in the amount of \$1,500.00. The tenant agreed that he owed this rent and advised that he intended to pay the rent. The landlord testified that he wanted the tenancy to continue provided that the tenant paid rent on time.

During the hearing, the landlord amended his Application to correct the spelling of the landlord company name.

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.

Both parties agreed to the following final and binding terms of settlement of all issues in dispute between them at this time:

1. The tenant agreed to pay the landlord the total amount of \$1,500.00 for November 2014 rent for the rental unit by 4:00 p.m. on November 7, 2014; and
2. Both parties agreed that if the tenant does not abide by the monetary terms of this settlement agreement as outlined above, that this tenancy will end.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties.

Conclusion

The 10 Day Notice, dated September 11, 2014, is of no force and effect.

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 \$1,500.00. 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 monetary terms of the above settlement. The landlord is provided with this Order in the above terms and the tenant must be served with a copy of this Order as soon as possible after a failure to comply with the terms of the above settlement agreement. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

To give effect to the settlement reached between the parties, I issue the attached two day Order of Possession to be used by the landlord **only** if the tenant does not abide by the monetary terms of the settlement agreement as outlined above by 4:00 p.m. on November 7, 2014, and **not for any other reason or at any future time** during this tenancy. The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible after a failure to comply with the terms of the above settlement agreement and in any event, **by no later than**

November 30, 2014. 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: November 12, 2014

Residential Tenancy Branch

