



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR OLC, RP, AAT, RR

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;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to comply with the *Act* pursuant to section 62; and
- an order allowing access to the unit for the tenant's guests pursuant to section 70.

The landlord testified that the tenant was served with the 10 Day Notice on November 4, 2014 by posting it on the tenant's door. The tenant confirmed receipt of the notice. Based on the evidence and pursuant to section 88 of the *Act*, the tenant was served November 7, 2014.

The tenant's advocate testified that, on receipt of the 10 Day Notice, she personally served the landlord with the dispute resolution package by delivering it to the landlord's offices and handing it to a representative of the landlord on November 10, 2014. The landlord confirmed receipt of the notice. Based on the evidence and pursuant to section 89 of the *Act*, the landlord was duly served with a copy of the tenant's dispute resolution package on November 10, 2014.

I note that the tenant submitted an amended application for dispute resolution applying to allow the tenant to reduce rent for repairs; allow access to the unit for the tenant or tenant's guests; and order requiring the landlord to make repairs to the unit and comply with the *Act*. However, the tenant was unable to testify as to how this amended application was served. The landlord was not able to confirm receipt of this amended application. Based on this lack of service, I dismiss the tenant's amended application

with leave to reapply. The application to cancel the notice to end tenancy for unpaid rent remains.

At the hearing, the landlord requested the issuance of an Order of Possession in the event that the tenant's application was dismissed.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy began March 1, 2014 as a month to month tenancy with a roommate. Currently, the tenant resides in the rental unit by himself. As of March 1, 2014, the landlord holds a security deposit in the amount of \$203.00.

The rental amount is a matter of dispute. The tenant has paid \$450.00 on the first of each month since the start of his tenancy. The landlord present at this hearing is the current property management company. The landlord claims that the tenant has paid only half of his rent since August 1, 2014. The landlord claims that the tenant's roommate moved out and the tenant no longer shared a rental unit with his roommate. The landlord claims that the tenant's suite was rented at \$900.00 per month regardless of the number of occupants. However, the tenant claims that \$450.00 per month was payable per occupant. The tenant has remained in the rental unit and the rental amount of \$450.00 has been accepted by the landlord each month.

The landlord claims, in the 10 Day Notice, \$1800.00 in unpaid rent outstanding as of November 4, 2014. On the basis of that outstanding amount, the 10 Day Notice required the tenant to vacate the rental unit on November 14, 2014. The landlord, and new property manager, had little information with respect to the single residence building's operation or the tenancies within the residential premises before he began management of the building. He testified that he has been unable to locate the appropriate documents to verify rental amounts and security deposit payments. Because of these missing documents, the landlord was unable to produce logs or records of rent payments.

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 landlord and tenant agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. Both parties agreed that this tenancy will end by 4:00 p.m. on December 3, 2014, by which time the tenant will have vacated the rental unit and the residential premises
2. The tenant agreed to provide keys to the rental unit to the landlord on December 3, 2014 by 4:00 p.m.
3. The tenant agreed to remove all personal items and belongings from the rental unit and the residential premises by December 3, 2014 by 4:00 p.m.
4. The landlord agreed to withdraw the 10 Day Notice.
5. The landlord agreed to return the security deposit of \$203.00 to the tenant by Friday, December 5, 2014 at 12:00 p.m., if the tenant has removed all personal items from the rental unit and residential premises as agreed above.
6. The landlord agreed to return any rental amount paid on behalf of the tenant for the month of December to the tenant by December 3, 2014 by 4:00 p.m.
7. The landlord agreed that the tenant has no arrears with this or any previous landlord with respect to any tenancy in any rental unit at the residential premises as indicated on this decision.

Both parties agreed that the settlement agreement outlined above constituted a final and binding resolution of all issues arising out of this application.

Conclusion

To give effect to the settlement reached between the parties, I issue the attached Order of Possession to be used by the landlord **only** if the tenant does not abide by the terms of the settlement agreement as outlined above by 4:00 p.m. on December 3, 2014, and **not for any other reason**. 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. 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.

With the exception of the tenant's original application to cancel the 10 Day Notice, I dismiss all portions of the tenant's amended application for dispute resolution with leave to reapply.

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 03, 2014

Residential Tenancy Branch

