



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNC, FF

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated December 20, 2014 with an effective move-out date of December 20, 2014, ("1 Month Notice"), pursuant to section 47;
- an order regarding a disputed additional rent increase, pursuant to section 43;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties 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 tenants confirmed that they received the landlord's 1 Month Notice on December 20, 2014, by way of posting to their rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlord's 1 Month Notice, as declared by the parties.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application") on January 8, 2015, in her mailbox. The landlord confirmed that she had reviewed the tenants' Application and that she had an opportunity to provide responsive evidence for this hearing. In accordance with section 71(2)(c) of the *Act*, I find that the landlord was sufficiently served for the purposes of this *Act*, with the tenants' Application, even though she was not served by one of the methods outlined in section 89 of the *Act*.

The tenants confirmed receipt of the landlord's first written evidence package in their mailbox. The tenants confirmed that they had reviewed the landlord's evidence, but noted that it was only 17 pages and differed from the Residential Tenancy Branch

("RTB") copy which contained 68 pages. The landlord confirmed that she had not served any 1 Month Notices or the tenancy agreement upon the tenants because they already had copies. The landlord confirmed that she had not provided full size copies of photographs and text messages to the tenants, but smaller, shrunken copies, which reduced the size of the evidence package served upon the tenants. The tenants objected to the admission of this evidence, given that it was not an identical copy to that produced to the RTB, as per Rule 3.7 of the RTB Rules of Procedure. Given that the parties were able to settle their dispute at this hearing and a decision was not made based upon the landlord's evidence, I do not make a determination regarding service of the landlord's first written evidence package.

The landlord confirmed that she had not served the tenants with her second written evidence package, which was received by the RTB on January 20, 2015. The landlord's evidence is required to be served upon the tenants as per Rule 3.1(f) of the RTB Rules of Procedure. I advised both parties during the hearing that I would not be considering the landlord's second written evidence package at this hearing.

During the hearing, the landlord made an oral request for an order of possession.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to an order regarding a disputed additional rent increase?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord testified that this tenancy began on June 1, 2014, for a fixed term of one year. Monthly rent of \$1,150.00 was originally due under the tenancy agreement. However, the parties agreed that the tenants would pay an additional \$50.00 per month in rent for their son, BS, to reside in the rental unit with them. Therefore, current monthly rent in the amount of \$1,200.00 is payable on the first day of each month, as of December 1, 2014. A security deposit of \$575.00 was paid by the tenants and the landlord continues to retain this deposit. The tenants continue to reside in the rental unit. The tenants occupy the lower level, while the landlord occupies the main floor of the landlord's house.

The landlord stated that she issued a 1 Month Notice, dated October 31, 2014, with an effective move-out date of November 30, 2014, and another 1 Month Notice, dated December 20, 2014, with an effective move-out date of January 31, 2015, both of which were not served upon the tenants.

The landlord indicated that she issued a 1 Month Notice, dated November 22, 2014, with an effective move-out date of December 31, 2014, which both parties settled as of December 1, 2014, when the tenants agreed to pay an extra \$50.00 per month for rent for their son to reside in the rental unit with them.

The tenants dispute the 1 Month Notice, dated December 20, 2014, with an effective move-out date of December 20, 2014, which both parties agreed was served upon the tenants, as noted above. The landlord indicated that she served her only handwritten copy upon the tenants and did not keep a copy for herself. The landlord then issued another 1 Month Notice, dated December 20, 2014, with an effective move-out date of January 31, 2015, in order to correct the effective date, but she did not serve this notice upon the tenants.

The tenants are also disputing the landlord's proposed rent increase of \$100.00 per month for vehicle storage in the landlord's garage. The landlord stated that the tenants have not performed cleaning and other tasks at the rental unit, as per their agreement. She stated that the tenants are causing damage and disturbance with their vehicles and other storage in the garage and around the rental unit. The tenants stated that they store their vehicles in the garage, that the use of the garage was already included in their tenancy agreement, and that they should not be required to pay an extra fee for this use.

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 settlement of all issues currently under dispute at this time:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on April 30, 2015, by which time the tenants and all other occupants will have vacated the rental unit;

2. As this tenancy is ending, both parties agreed that this settlement resolves the tenants' application regarding a disputed additional rent increase, including with respect to the landlord's request for \$100.00 additional per month for vehicle and other storage in the landlord's garage;
 - a. The parties agreed that the tenants will not pay \$100.00 additional per month for vehicle or other storage in the landlord's garage;
 - b. The parties agreed that monthly rent will remain at \$1,200.00 per month;
3. Both parties agreed that this settlement cancels all 1 Month Notices issued by the landlord to date, for this tenancy, including the following:
 - a. 1 Month Notice, dated October 31, 2014, with an effective move-out date of November 30, 2014;
 - b. 1 Month Notice, dated November 22, 2014, with an effective move-out date of December 31, 2014;
 - c. 1 Month Notice, dated December 20, 2014, with an effective move-out date of December 20, 2014; and
 - d. 1 Month Notice, dated December 20, 2014, with an effective move-out date of January 31, 2015;
4. The tenants agreed to bear the cost of their own filing fee of \$50.00 for this application.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties provided verbal confirmation that they agreed to the above terms as legal, final and binding terms.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenants and all other occupants fail to vacate the rental premises by 1:00 p.m. on April 30, 2015. The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order in the event that the tenants and all other occupants do not vacate the premises by 1:00 p.m. on April 30, 2015. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord's 1 Month Notices, dated October 31, 2014, November 22, 2014, December 20, 2014 with an effective move-out date of December 20, 2014, and December 20, 2014 with an effective move-out date of January 31, 2015, as noted above, are all cancelled and of no force or effect.

The tenants must bear the cost of their own filing fee of \$50.00 for this application.

To give effect to Term 2 of the settlement agreement between the parties, I order that the monthly rent for the remainder term of this tenancy is set at \$1,200.00.

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: January 27, 2015

Residential Tenancy Branch

