



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KAITON REALTY GROUP INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MT, CNR

Introduction

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

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated December 2, 2014 ("10 Day Notice"), pursuant to section 66; and
- cancellation of the landlord's 10 Day Notice, pursuant to section 46.

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 confirmed that he is the new property manager for the landlord company and he has the authority to represent both the landlord company and the personal landlord named in this application, as agent at this hearing. The tenant confirmed that he is the owner of the tenant company named in this application.

The landlord testified that he personally served the tenant with the 10 Day Notice on December 2, 2014. The tenant confirmed receipt of the 10 Day Notice. In accordance with sections 88 and 90 of the Act, I find that the tenant was duly served with the 10 Day Notice on December 2, 2014.

The tenant testified that he personally served the landlord with his application for dispute resolution hearing notice on December 12, 2014, and his written evidence package on December 30, 2014. The landlord confirmed receipt of the notice and written evidence. In accordance with sections 88, 89 and 90 of the Act, I find that the landlord was duly served with the tenant's notice and written evidence, as declared by the tenant.

Issues to be Decided

Is the tenant permitted more time to make an application to cancel the landlord's 10 Day Notice?

Should the landlord's 10 Day Notice be cancelled?

Background and Evidence

The tenant testified that his tenancy began on January 15, 2013 for a fixed term ending on January 31, 2015. Monthly rent in the amount of \$5,500.00 is payable on the first day of each month. Both parties testified that a security deposit of \$2,750.00 was paid by the tenant for this tenancy and the landlord continues to retain this deposit. A written tenancy agreement and addendum, was provided by the tenant with his application.

The 10 Day Notice states that \$16,500.00 in rent was due on December 1, 2014. The landlord testified that \$5,500.00, paid by the tenant as a prepayment at the beginning of this tenancy, was applied to this outstanding amount. This reduced the balance to \$11,000.00 as of December 2, 2014. The landlord testified that \$5,500.00 for January 2015 rent is also unpaid. Both parties agreed that as of January 2, 2015, the tenant owes a balance of \$16,500.00 towards rent for this tenancy.

Analysis

Pursuant to section 56 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 January 31, 2015, by which time the tenant will have vacated the rental unit;
2. The tenant agreed to pay the landlord the total amount of \$16,500.00 towards rent for this tenancy, according to the following schedule:
 - a. \$2,750.00 will be immediately applied to the outstanding rent balance above by the landlord from the tenant's security deposit;
 - i. the landlord accepts the consequences of using the security deposit prior to the end of this tenancy and prior to this tenant vacating the rental unit;
 - b. \$4,584.00 will be paid by the tenant to the landlord by February 15, 2015;
 - c. \$4,583.00 will be paid by the tenant to the landlord by March 15, 2015; and
 - d. \$4,583.00 will be paid by the tenant to the landlord by April 15, 2015.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Verbal affirmation was received from both parties that they agreed to the above settlement terms.

Conclusion

As advised to both parties during the hearing, 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 fails to vacate the rental premises by 1:00 p.m. on January 31, 2015. The landlord is provided with this Order in the above terms and the tenant must be served with this Order in the event that the tenant does not vacate the premises by 1:00 p.m. on January 31, 2015. 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.

Also advised to both parties during the hearing, 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 \$16,500.00. 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 terms of the above monetary 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 monetary settlement. 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 legal effect to the above-noted settlement agreement reached between the parties, I order the landlord to retain the tenant's security deposit of \$2,750.00.

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 15, 2015

Residential Tenancy Branch

