



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, CNR, MNR, 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; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated January 7, 2015 ("10 Day Notice"), pursuant to section 46;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's agent, MT ("landlord") and the tenant VLP ("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. At the outset of the hearing, the landlord's agent confirmed that she had authority to speak as agent on behalf of the landlord and she provided a signed authorization letter, dated January 1, 2015, to this effect. The tenant confirmed that he is the owner and was acting as agent for the landlord company named in these applications.

The landlord testified that the tenants were served with the landlord's application for dispute resolution hearing package ("Landlord's Application") on January 16, 2015, by way of registered mail. The tenants confirmed receipt of the Landlord's Application. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were duly served with the Landlord's Application, as declared by the parties.

The tenant testified that the landlord was served with the tenants' application for dispute resolution hearing package ("Tenants' Application") on January 9, 2015, by way of registered mail. The landlord confirmed receipt of the Tenants' Application but not all of the tenants' written evidence. In accordance with sections 89 and 90 of the Act, I find that the landlord was duly served with the tenants' notice and some written evidence, as declared by the parties. Given that the parties were able to settle their dispute at this hearing and a decision was not made based upon the tenants' written evidence, I do not make a determination regarding service of the tenants' remaining written evidence package, which the landlord said that he did not receive.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

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

Are the tenants and/or the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord testified that this tenancy began on March 23, 2003. Monthly rent in the current amount of \$2,050.00 is payable on the 17th day of each month. A security deposit of \$950.00 was paid by the tenants for this tenancy. The landlord stated that the security deposit was applied towards December 2003 rent. The tenant disputes that the security deposit was applied towards rent and indicated that the landlord continues to retain this security deposit. The tenants continue to reside in the rental unit.

Both parties testified that monthly rent was \$1,900.00 at the beginning of this tenancy under the tenancy agreement. Both parties agreed that rent was raised to \$1,950.00 around August 2009 and again raised to \$2,000.00 around August 2012. Both parties testified that a verbal agreement was made for the tenant to begin paying rent on the 17th rather than the 1st of each month, beginning around March 2013. The parties agreed that the tenant initiated paying \$50.00 extra per month for rent, beginning around August 2013, for a total monthly rent of \$2,050.00. The tenant stated that this extra \$50.00 per month was to account for the 17 day shift in the rental due dates from the 1st to the 17th of each month. The landlord stated that she did not know why this extra \$50.00 amount was paid by the tenant but that it was accepted by the landlord for rent.

Both parties agreed that rent in the amount of \$2,050.00 is unpaid for October 2014. The landlord seeks \$2,050.00 in unpaid rent for January 2015. The tenant stated that he only owes rent from January 17 to 31, 2015, on account of the rental due date shift, which the landlord disputes.

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 January 31, 2015, by which time the tenants and all other occupants will have vacated the rental unit;
 - a. The tenants agreed to return the rental unit keys to the landlord when they vacate by no later than 1:00 p.m. on January 31, 2015;
2. The tenants agreed to pay the landlord a total of \$3,050.00 by way of certified cheque, by no later than 11:30 a.m. on January 31, 2015;
 - a. The above payment of \$3,050.00 is accepted by the landlord in full satisfaction of all outstanding rent owed by the tenants for this tenancy, including for October 2014 rent and January 2015 rent;
3. The landlord withdraws the landlord's claim of \$105.00 sought for all fees associated with bounced rent cheques during this tenancy;
4. Both parties agree to bear the costs of their own filing fees of \$50.00 each for their applications.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties gave verbal sworn affirmation at the hearing that they agreed to the above terms, which settle all aspects of this dispute.

Conclusion

To give effect to the settlement reached between the parties, and as advised to both parties during 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 January 31, 2015. The landlord is provided with this Order in the above terms and the tenants 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 January 31, 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.

In order to implement the above settlement reached between the parties, and as advised to both parties during the hearing, I issue a monetary Order in the landlord's favour in the amount of \$3,050.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenants do not pay \$3,050.00 to the landlord by 11:30 a.m. on January 31, 2015. The landlord is provided with this Order in the above terms and the tenant(s) 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 agreement. Should the tenant(s) 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.

The landlord's 10 Day Notice, dated January 7, 2015, is cancelled and of no force or effect.

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 28, 2015

Residential Tenancy Branch

