



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DORSET REALTY GROUP CANADA LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC, FF

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 1 Month Notice to End Tenancy for Cause, dated January 8, 2015 ("1 Month Notice"), pursuant to section 66;
- cancellation of the landlord's 1 Month Notice, pursuant to section 47;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's two agents, KS and IR (individually "landlord KS" and "landlord IR" and collectively "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. Landlord KS confirmed that he is the property manager for the rental unit building and the vice president of the "landlord company," DRGCL, named in this application. Landlord IR confirmed that he is the building manager for the rental unit building. Both landlords KS and IR confirmed that they had authority to represent the landlord company as agents at this hearing.

Landlord IR testified that he served the tenant with the 1 Month Notice by posting it to the tenant's rental unit door. The tenant confirmed receipt of the 1 Month Notice on January 26, 2015. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice.

The tenant testified that he served the landlord with the tenant's Application for Dispute Resolution hearing package ("Application") on February 3, 2015, by way of registered

mail. Landlord KS confirmed receipt of the tenant's Application. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application, as declared by the parties.

Landlord KS testified that he served the tenant with two written evidence packages, one containing a rent ledger on February 17, 2015 and another containing a 10 Day Notice for Unpaid Rent, dated February 12, 2015 ("10 Day Notice"), on February 19, 2015, by placing them under the tenant's rental unit door. The tenant confirmed receipt of the first written evidence package containing the rent ledger. The tenant confirmed that he did not receive the second written evidence package containing the 10 Day Notice. However the tenant confirmed that he received the 10 Day Notice separately on February 12, 2015, when it was served upon him by the landlord. Although serving documents under the door is not a service method that is allowed under section 89 of the *Act*, the tenant confirmed that he received and had a chance to review the landlord's rent ledger and the 10 Day Notice, and that he had no objection to proceeding with the hearing on the basis of this evidence. Based on the sworn testimony of the parties, I find that there would be no denial of natural justice in proceeding with this hearing and considering the landlord's rent ledger and 10 Day Notice. I find that the landlord's rent ledger is sufficiently served upon the tenant, for the purposes of section 71(2)(c) of the *Act*.

Issues to be Decided

Is the tenant permitted more time to make an application to cancel the landlord's 1 Month Notice?

Should the landlord's 1 Month Notice be cancelled?

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

Background and Evidence

Landlord KS testified that this tenancy began on May 1, 2009. Monthly rent in the current amount of \$926.00 is payable on the 1st day of each month. Both parties agreed that monthly rent under the tenancy agreement was initially \$855.00 per month and that legal notices of rent increase were provided to the tenant throughout this tenancy, in order to increase the monthly rent to the current amount of \$926.00. A security deposit of \$427.50 was paid by the tenant on April 7, 2009 and the landlord continues to retain this deposit.

A written tenancy agreement governs this tenancy, although one was not provided with the tenant's Application. Landlord KS confirmed that there are two tenants who signed the tenancy agreement, including this tenant and another tenant, "RFE". The tenant confirmed that RFE vacated the rental unit on January 20, 2015; Landlord KS confirmed that he had no prior knowledge of this fact.

The tenant testified that he was unaware that the 1 Month Notice was posted to his rental unit door on January 8, 2015, as RFE received the notice and did not advise the tenant about it. The tenant stated that after RFE vacated the rental unit, he found the 1 Month Notice on the floor inside a closet. The tenant stated that he immediately took action to dispute the notice, after exploring his options and taking time off work, by filing his Application on February 2, 2015.

The landlord issued the 1 Month Notice, indicating that the tenant is repeatedly late paying rent. The 1 Month Notice indicates an effective move-out date of February 28, 2015. Landlord KS indicated that the tenant has been late in paying rent more than three times during this tenancy. Both parties agreed that the tenant was initially permitted to make bi-weekly rent payments when VA, the previous property manager, was handling this tenancy. Both parties agreed that the tenant is currently making only monthly rent payments. Landlord KS indicated that the landlord will no longer accept any personal cheques from the tenant for rent payments, due to the high amount of dishonoured cheques received from the tenant during this tenancy. The tenant indicated that he currently makes mainly cash rent payments to the landlord.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$926.00 was due on February 1, 2015. Both parties agreed that the tenant attempted to pay \$926.00 for February 2015 rent to landlord IR, who refused to accept the payment.

The landlord provided a rent ledger, dated August 1, 2013 to February 3, 2015. Both parties agreed that, as per the rent ledger, \$997.70 is currently owing for unpaid rent, late charges and NSF fees for this tenancy. Both parties agreed that this amount includes \$926.00 for February 2015 rent.

The tenant also seeks to recover the filing fee of \$50.00 from the landlord.

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. The tenant agreed to pay the landlord a total amount of \$997.70, in full satisfaction of all unpaid rent, NSF fees and late charges for this tenancy to date, by no later than 4:00 p.m. on February 23, 2015;
2. Both parties agreed that this tenancy will continue in the event that the tenant abides by the monetary term of this settlement agreement as outlined above. In that event, the landlord agreed to withdraw the 1 Month Notice, dated January 8, 2015, and the 10 Day Notice, dated February 12, 2015;
3. Both parties agreed that this tenancy will end by 1:00 p.m. on February 28, 2015 by which time the tenant will have vacated the rental unit, only if the tenant does not abide by the monetary term of this settlement agreement as outlined above, by 4:00 p.m. on February 23, 2015;
4. The tenant agreed to withdraw his application to recover the \$50.00 filing fee for his application.

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 tenant fails to abide by the monetary term of the above agreement **and** fails to vacate the rental premises by 1:00 p.m. on February 28, 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 abide by the monetary term of the above agreement and does not vacate the premises by 1:00 p.m. on February 28, 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.

In the event that the tenant abides by the monetary term of this settlement agreement, I find that the landlord's 10 Day Notice, dated February 12, 2015, and the landlord's 1

Month Notice, dated January 8, 2015, are cancelled and of no force or effect. In that event, this tenancy continues until it is ended in accordance with the *Act*.

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 \$997.70. 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 term of the above monetary agreement. 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 term of the above monetary 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.

The tenant must bear the cost of his own filing fee of \$50.00 for this Application.

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: February 23, 2015

Residential Tenancy Branch

