



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, CNR, FF

Introduction

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

- more time to make an application to cancel the landlords' 10 Day Notice to End Tenancy for Unpaid Rent, dated January 11, 2015, ("10 Day Notice"), pursuant to section 66;
- cancellation of the landlords' 10 Day Notice, pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated January 21, 2015 ("1 Month Notice"), pursuant to section 47;
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The landlord, RK ("landlord") and the tenant, CAC ("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 had a power of attorney for both "landlord JK" and "landlord AK," named in this application, and that he had authority to represent them as agents at this hearing. The tenant confirmed that he had authority to represent his wife, "tenant SC," as agent at this hearing.

The landlord testified that he personally served tenant SC with the 10 Day Notice on January 11, 2015. The tenant confirmed receipt on the same date. In accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on January 11, 2015.

The landlord testified that he served the tenants with a 1 Month Notice on January 21, 2015, by way of registered mail. The tenant confirmed receipt of the 1 Month Notice. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were duly served with the 1 Month Notice. The tenant filed his Application on January 30, 2015, within 10 days of receiving the 1 Month Notice, as per section 47(4) of the *Act*.

The tenant testified that he served the landlord with the tenants' application for dispute resolution hearing package ("Application") on February 2, 2015, by way of registered mail. The landlord confirmed receipt of the tenants' Application. In accordance with sections 89 and 90 of the Act, I find that the landlords were duly served with the tenants' Application, as declared by the parties.

The landlord testified that the landlords served their first written evidence package to the tenants on February 5, 2015, and their second written evidence package on February 11, 2015, both by way of registered mail. The tenant confirmed receipt of the second package but not the first package. I had only received a copy of the landlords' first written evidence package, not the second package. In accordance with sections 88 and 90 of the Act, I find that the tenants were duly served with the landlords' second written evidence package. Given that the parties were able to settle their dispute at this hearing and a decision was not made based upon the landlords' written evidence, I do not make a determination regarding service of the landlords' first written evidence package, which the tenant said that he did not receive.

Preliminary Issues

During the hearing, the tenant requested an amendment to add the name of tenant SC, as an applicant tenant party, to the tenants' Application. The tenant stated that he inadvertently omitted tenant SC's name from the tenants' Application. The tenant indicated that he was representing tenant SC in this proceeding, that tenant SC lived in the rental unit, and that tenant SC was named in all of the landlords' notices to end tenancy as well as the tenancy agreement. The landlord testified that he did not object to this amendment request. In accordance with my authority under section 64(3)(c) of the Act, I amended the tenants' application to add the name of tenant SC as an applicant tenant in this Application, a change which is reflected on the front page of this decision.

The landlord confirmed that he issued another 10 Day Notice for Unpaid Rent on January 26, 2015, with an effective move-out date of January 26, 2015, to the tenants ("second 10 Day Notice"). However, the copy supplied by the landlord was unsigned and undated; the landlord stated that the original copies were signed and dated and given to the tenants without photocopies being made. The landlord further confirmed that a rent payment was made by the tenants on January 27, 2015, to cancel this second 10 Day Notice.

The landlord confirmed that a rent payment was made by the tenants on January 12, 2015, to cancel the 10 Day Notice that is the subject of this Application.

During the hearing, the landlord confirmed that all of the previous 10 Day Notices that were issued to the tenants during this tenancy, to date, were cancelled. The landlord confirmed that he was not seeking an order of possession based on any 10 Day Notices. The landlord stated that there are no outstanding rent payments due for this tenancy and that the tenants had made the required rent payments within five days of receiving the 10 Day Notices. Accordingly, all of the landlords' 10 Day Notices, issued to date for this tenancy, are cancelled and of no force or effect.

During the hearing, the landlord made an oral request for an order of possession based on his 1 Month Notice for Cause.

Issues to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an order of possession?

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

Background and Evidence

The tenant testified that this tenancy began on November 1, 2002. Monthly rent in the current amount of \$1,218.00 is payable on a bi-weekly basis. Tenant SC resides in the rental unit. The tenant resides in another city and only visits tenant SC at the rental unit on a periodic basis.

Landlords JK and AK own the rental unit, which is located in a strata building. The landlord manages this tenancy on behalf of both landlords JK and AK. The landlord indicated that he did not have all of the paperwork for this tenancy, as he could not locate many documents stored by landlords JK and AK. The tenant testified that a written tenancy agreement was signed by both tenants for this tenancy and that the tenants possess a copy of the tenancy agreement. The landlord could not locate a copy of the tenancy agreement.

Both parties testified that the rent was originally \$1,100.00 at the beginning of this tenancy. The landlord testified that rent was raised to \$1,192.00 as of January 1, 2007 and again to \$1,218.00 as of August 1, 2014. The landlord did not know whether a Notice of Rent Increase was issued for the 2007 rent increase. The landlord indicated that he served a Notice of Rent Increase, dated April 24, 2014, by way of registered mail to the tenants on April 25, 2014, to raise the rent from \$1,192.00 to \$1,218.00. The

tenant confirmed that rent payments of \$562.00 were made to the landlords every two weeks and that the tenants agreed to pay \$1,218.00 in rent for this rental unit.

The landlords issued the 1 Month Notice, stating an effective move-out date of February 28, 2015, indicating the following reasons for ending this tenancy:

- *Tenant is repeatedly late paying rent.*
- *Tenant or a person permitted on the property by the tenant has:*
 - *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
 - *put the landlord's property at significant risk.*
- *Tenant has not done required repairs of damage to the unit/site.*

Both parties agreed that the tenants have not performed required repairs of a hole in the wall of the bathroom on the upper floor of the rental unit and have not replaced the door of the recreation room, as requested by the landlords. Both parties agreed that the tenants have not reinstated gas utility services at the rental unit, as requested by the landlords. The landlord indicated that the tenants were using space heaters instead of gas heating in order to heat the rental unit and that this poses a fire hazard. The landlord testified that the tenants continually paid rent late during this tenancy. The tenant disputed this fact and indicated that the tenants overpaid rent of \$5,880.00 from 2006 to 2012, during this tenancy. The landlord disputed this overpayment of rent.

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 that the tenancy will continue and the landlords' 1 Month Notice, dated January 21, 2015, is withdrawn, subject to the following final and binding terms in settlement of all issues currently under dispute:

1. Both parties agreed to amend the current terms of the tenancy agreement as follows in respect to the payment of rent:
 - a. that the tenants will pay rent to the landlords of \$1,218.00 per month, in advance, on the 29th day of the previous month, with the exception of February rent each year in which case rent will be paid on February 28th or 29th as applicable;

- b. The landlords may issue a new notice to end tenancy and apply for dispute resolution in accordance with the *Act*, in order to obtain an order of possession in the event that the tenants do not abide by the monetary terms of their new payment arrangement as outlined above.
2. At their own cost, the tenants agreed to repair the hole in the bathroom wall and repaint all walls with the same color in the bathroom on the top floor of the rental unit by March 14, 2015.
3. At their own cost, the tenants agreed to replace the door of the recreation room of the rental unit, with a similar door, by March 14, 2015.
4. The tenants agreed to contact the gas company by February 20, 2015, in order to ensure that gas utility services are reinstated at the rental unit;
 - a. The tenants agree to pay the costs of these gas utility services at the rental unit for the remainder of their tenancy, unless and until another mutual agreement is made between the parties.

Both parties acknowledge that the landlords are being given an Order of Possession, and they agree that **if the above conditions #2, 3 and 4 are not fulfilled in the agreed terms, the tenancy will end by 1:00 p.m. on March 31, 2015**, in accordance with the Order of Possession.

5. At their own cost, the landlords agreed to contact and supply a furnace gas technician to attend at the rental unit in order to adequately service and ensure that the furnace is in proper working order after gas utility services are reinstated at the rental unit, by February 27, 2015.
6. The landlords agreed to contact the strata management company for the rental unit by February 13, 2015, in order to adequately deal with the silverfish issue at the rental unit;
 - a. The landlords agreed to bear all costs associated with condition #6, in the event that they are required to do so by the strata management company for the rental unit.
7. At their own cost, the landlords will adequately deal with the silverfish issue at the rental unit by enlisting the services of a certified pest control representative by February 28, 2015, in the event that the strata management company of the rental unit is not required to deal with this issue.

8. Both parties agreed that **the tenants are permitted to reduce their monthly rent** by the following schedule in the event that the landlords do not abide by conditions #5, 6, and 7 above:
- a. \$100.00 as of the first and second months of non-compliance;
 - b. \$200.00 as of the third and fourth months of non-compliance;
 - c. \$300.00 as of the fifth and sixth months of non-compliance;
 - d. \$400.00 for the seventh and eighth months of non-compliance;
 - e. \$500.00 for the ninth and any additional months of non-compliance;
 - f. This rent reduction is to take effect on the 29th day of the following month after the non-compliance occurs.

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 understood and agreed to **the above settlement terms as legal, final and binding**.

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 landlords **only** if the tenants do not abide by conditions #2, 3 and 4 above **and** fail to vacate the rental premises by 1:00 p.m. on March 31, 2015. The landlords are provided with this Order in the above terms and the tenant must be served with this Order in the event that the tenants do not abide by conditions #2, 3 and 4 above **and** fail to vacate the rental premises by 1:00 p.m. on March 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.

All of the landlords' 10 Day Notices, issued to date for this tenancy, are cancelled and of no force or effect.

In the event that the tenants abide by conditions #2, 3 and 4 of the above settlement agreement, I find that the landlords' 1 Month Notice, dated January 21, 2015, is cancelled and no force or effect. In that event, this tenancy continues until it is ended in accordance with the *Act*.

In the event that the landlords do not abide by conditions #5, 6 and 7 of the above settlement agreement, I order the tenants to reduce their monthly rent at the rental unit in accordance with the schedule outlined in condition #8 above.

As the parties were able to mutually resolve their dispute, I decline to grant the tenant recovery of the filing fee.

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 27, 2015

Residential Tenancy Branch

