



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE GLENAYRE REALTY CHILLIWACK
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNR, DRI, O, FF, OPR

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 February 18, 2015 ("10 Day Notice"), pursuant to section 66;
- cancellation of the landlord's 10 Day Notice, pursuant to section 46;
- an order regarding a disputed additional rent increase, pursuant to section 43;
- other unspecified remedies;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's agent, MB ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that he had authority to represent the landlord company named in this application, as an agent at this hearing.

The tenant testified that she received the landlord's 10 Day Notice on February 18, 2015, by way of posting to her rental unit door. The tenant filed her application for dispute resolution on February 20, 2015. In accordance with sections 89 and 90 of the Act, I find that the tenant was duly served with the landlord's 10 Day Notice on February 18, 2015.

The tenant testified that she served the landlord with the tenant's application for dispute resolution hearing package ("Application") on February 23, 2015. The landlord 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.

The tenant testified that she served the landlord with her written evidence package containing a number of emails. The landlord confirmed receipt of the tenant's written evidence package. In accordance with sections 88 and 90 of the Act, I find that the landlord was duly served with the tenant's written evidence. The tenant did not serve this evidence to the Residential Tenancy Branch ("RTB"). However, given that this matter settled, I do not find it necessary to review this evidence.

The landlord testified that he did not serve his written evidence package upon the tenant but he served a copy to the RTB only. The written evidence included the tenancy agreement, an addendum to the tenancy agreement and a rent ledger. The tenant confirmed that she already had a copy of the tenancy agreement but not the other documents. I advised both parties at the hearing that I could not consider the landlord's written evidence package, with the exception of the tenancy agreement.

During the hearing, the tenant withdrew her application for more time to make an application to cancel the landlord's 10 Day Notice, for an order regarding a disputed additional rent increase, and for other unspecified remedies. Accordingly, these portions of the tenant's application are withdrawn.

During the hearing, the landlord made an oral request for an order of possession if the tenant's application is dismissed.

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

Background and Evidence

The landlord testified that this tenancy began on May 1, 2014 for a fixed term to end on April 30, 2015, after which it transitions to a month to month tenancy. Both parties agreed that monthly rent of \$2,150.00 is payable on the first day of each month. A security deposit of \$1,075.00 was paid by the tenants on April 22, 2014 and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit with her two children.

Both parties agreed that two tenants are named on the tenancy agreement. The tenant confirmed that the other tenant, "RC," vacated the rental unit on December 15, 2014 because of flooding issues. The tenant stated that she did not perform any emergency repairs in the rental unit, only regular repairs, due to the flooding issues. The landlord stated that he became aware of the flooding issues after RC moved out of the rental unit but that he had not made any repairs.

The landlord testified that he issued the 10 Day Notice indicating that rent of \$2,250.00 was due on February 1, 2015. The landlord testified that rent of \$750.00 for each month from December 2014 to February 2015 was unpaid. The tenant testified that the 10 Day Notice indicates an effective move-out date of March 3, 2015. Neither party provided a copy of the 10 Day Notice for this hearing.

The tenant testified that she paid \$1,400.00 per month for her portion of rent for the upper level of the house, while RC paid \$750.00 for his portion of rent for the lower level of the house. The tenant testified that RC stopped paying his portion of rent of \$750.00 each month from December 2014 to March 2015. The tenant stated that RC was responsible for his portion of the rent, not the tenant. The tenant indicated that the lower portion of the house was uninhabitable because of the flooding issues and that she was unable to find another tenant to occupy the property to assist with paying rent. The landlord stated that rent of \$3,000.00 is currently unpaid from December 2014 to March 2015.

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 5, 2015, by which time the tenant, her two children and any other occupants will have vacated the rental unit;
2. The tenant agreed to withdraw her application to recover the \$50.00 filing fee from the landlord.

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 understood and agreed to the above terms as legal, final and binding, 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 and any other occupants fail to vacate the rental premises by 1:00 p.m. on April 5, 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 and any other occupants fail to vacate the rental premises by 1:00 p.m. on April 5, 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.

The landlord's 10 Day Notice, dated February 18, 2015, is cancelled and of no force or effect.

The tenant's Application to recover the \$50.00 filing fee is withdrawn. The tenant must bear the cost of her own filing fee.

The tenant's Application for more time to make an application to cancel the landlord's 10 Day Notice, for an order regarding a disputed additional rent increase, and for other unspecified remedies, is withdrawn.

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: March 23, 2015

Residential Tenancy Branch

