



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR

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 landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated February 5, 2015 ("10 Day Notice"), pursuant to section 66; and
- cancellation of the landlord's 10 Day Notice, pursuant to section 46.

The tenant SB ("tenant") and the landlord 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 tenant confirmed that she had authority to represent the other tenant named in this application, KM, as an agent at this hearing.

The tenant confirmed that both tenants received the landlord's 10 Day Notice on February 5, 2015, by way of posting to their rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were duly served with the landlord's 10 Day Notice on February 5, 2015.

The landlord testified that the tenant personally handed him the tenants' application for dispute resolution hearing package ("Application") on February 20, 2015. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' Application.

Issues to be Decided

Should the tenants be permitted more time to cancel the landlord's 10 Day Notice?

Should the landlord's 10 Day Notice be cancelled?

Background and Evidence

Both parties agreed that this month to month tenancy began on April 1, 2013. Monthly rent in the amount of \$750.00 is payable on the first day of each month. A security deposit of \$375.00 was paid by the tenants on April 15, 2013 and the landlord continues to retain this deposit. There is no written tenancy agreement for this tenancy, as it was an oral agreement.

The landlord's 10 Day Notice indicates that \$1,700.00 in unpaid rent was due on February 1, 2015. The landlord stated that the tenants owe \$200.00 in unpaid rent for December 2014 and \$750.00 in unpaid rent for each of January, February and March 2015. Both parties agreed that the tenants currently owe \$2,450.00 in unpaid rent for this tenancy for the period 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. The parties agreed to set aside the existing payment terms of their oral tenancy agreement until July 1, 2015, on the basis of the tenants' agreement to pay the landlord rent for this tenancy, according to the following schedule:
 - a. \$750.00 by March 11, 2015;
 - b. \$400.00 by March 20, 2015;
 - c. \$575.00 by April 3, 2015;
 - d. \$575.00 by April 17, 2015;
 - e. \$575.00 by May 1, 2015;
 - f. \$575.00 by May 15, 2015;
 - g. \$500.00 by May 29, 2015;
 - h. \$750.00 by June 12, 2015;
2. Both parties agreed that condition #1 of the above monetary agreement satisfies all unpaid rent currently owing for this tenancy from December 2014 to March 2015 (totaling \$2,450.00), as well as future rent from April to June 2015 (totaling \$2,250.00);

3. Both parties agreed that as of July 1, 2015, rent will be due on the first day of each month for the remainder of this tenancy, unless and until both parties agree otherwise;
4. Both parties agreed that this tenancy will continue in the event that the tenants abide by condition #1 of the above monetary agreement. In that event, the landlord agreed to withdraw the 10 Day Notice, dated February 5, 2015;
5. Both parties agreed that this tenancy will end pursuant to a five day Order of Possession, if the tenants default on any rent payments under condition #1 of the above monetary agreement.

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. The tenant testified that she understood that the above agreement was being made on behalf of both tenants and that binding and enforceable orders were being issued against both tenants. The tenant confirmed that she will communicate the terms of this agreement to the other tenant KM.

Conclusion

To give effect to the settlement reached between the parties and as discussed with them during the hearing, I issue the attached five day Order of Possession to be used by the landlord **only** if the tenants do not abide by the terms of Condition #1 of the above monetary agreement. As I noted during the hearing, this five day **Order of Possession expires on June 30, 2015** and it cannot be served upon the tenants after **June 30, 2015**, as that is the last month for the monetary agreement outlined above. The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order in the event that the tenants do not abide by condition #1 of the above monetary agreement. Should the tenant(s) 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 tenants abide by Condition #1 of the above monetary agreement, I find that the landlord's 10 Day Notice, dated February 5, 2015, is cancelled and of no force or effect. In that event, this tenancy continues until it is ended in accordance with the *Act*.

To give effect to the settlement agreement between the parties, I order that the existing monetary terms of the oral tenancy agreement between these parties and the dates when payments are due are to be amended to the schedule outlined in Condition #1 as

set out above until July 1, 2015. Should this tenancy continue after July 1, 2015, I order that the terms outlined in Condition #3 take effect for the remainder of the tenancy until revised in accordance with the *Act*.

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 \$2,450.00, the amount currently owing for this tenancy from December 2014 to March 2015. 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 the landlord at least \$2,450.00 as per Condition #1 of the above monetary agreement. 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 the tenants do not pay the landlord at least \$2,450.00 as per Condition #1 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 is at liberty to apply for a new monetary award for the remaining \$2,250.00 for future rent amounts that become owing from April to June 2015.

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 25, 2015

Residential Tenancy Branch

