



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47; and
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated February 9, 2015 ("2 Month Notice"), pursuant to section 49.

Both parties 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 testified that he personally served the tenant with the 2 Month Notice on February 9, 2015 with a witness, KB, present. The tenant confirmed receipt of the 2 Month Notice on February 11, 2015. In accordance with section 89 of the *Act*, I find that the tenant was duly served with the 2 Month Notice.

The landlord confirmed that he personally received the tenant's application for dispute resolution hearing package ("Application") on February 27, 2015. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's Application.

Preliminary Issues

During the hearing, the tenant withdrew her application to cancel the landlord's 1 Month Notice. Accordingly, this portion of the tenant's application is withdrawn.

During the hearing, the tenant requested an amendment to her application, in order to add the relief to ask for more time to make an application to cancel the landlord's 2 Month Notice. The landlord opposed the tenant's amendment request. The tenant

stated that she did not realize that she was out of time to make her application to cancel the 2 Month Notice within 15 days as per section 49(8) of the *Act*. The tenant stated that she was informed by an advocacy group assisting her with her Application, that she was only required to file her Application by February 27, 2015, which she did. The tenant also stated that the Service BC office is only open on Mondays, Wednesdays and Fridays and that she attended at the office on the next open day when her Application was due to be filed, which was a Friday. All of these reasons are why the tenant says she should be allowed to amend her Application to add more time and that she should be given more time to make her Application to cancel the 2 Month Notice.

As per section 64(3)(c) of the *Act*, I have the authority to make an amendment to the tenant's application to add the tenant's requested relief for more time to cancel the 2 Month Notice. The landlord has opposed this amendment. However, I am prepared to grant the tenant's requested amendment to add the relief to add more time to cancel the 2 Month Notice. I make this amendment due to the miscommunication between the tenant and the advocate assisting her and due to the short timeline between when the tenant says she received the 2 Month Notice and the filing of her Application.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled?

Background and Evidence

The tenant testified that this month to month tenancy began on August 29, 2013 and continues to present. Both parties agreed that monthly rent in the amount of \$500.00 is payable for this tenancy. The tenant testified that monthly rent is due on the 29th day of each month, while the landlord testified that monthly rent was due on the last day of each month. Both parties agreed that no security deposit was required or paid for this tenancy.

The tenant seeks to cancel the landlord's 2 Month Notice. The landlord issued the 2 Month Notice with an effective move-out date of April 9, 2015. The landlord indicated that the effective date was incorrect, as it was not in accordance with the *Act*. The corrected effective date would be April 29, 2015. The 2 Month Notice, entered into written evidence by the tenant, identified the following reason for seeking an end to this tenancy:

- *The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.*

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. During the hearing, the landlord contacted the owners of the rental unit by way of telephone. At the hearing, the landlord testified that the owners agreed to the following terms of this settlement agreement.

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 \$250.00 on April 10, 2015 and \$250.00 on April 22, 2015 in full satisfaction of rent for March 2015;
2. Both parties agreed that pursuant to the 2 Month Notice, the tenant receives one free month's rent as compensation under section 51 of the *Act*, and that rent of \$500.00 is not due for the entire month of April 2015;
3. Both parties agreed that this tenancy will end by 1:00 p.m. on May 1, 2015, by which time the tenant and anyone on the premises will have vacated the rental unit;
4. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the tenant's Application at this hearing and all issues in dispute at this time arising out of this tenancy;
5. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the landlord's application scheduled for a hearing on May 19, 2015, arising out of this tenancy, the file number of which appears on the front page of this decision;
 - a. The landlord agreed to withdraw his application scheduled to be heard on May 19, 2015 for an order of possession for unpaid rent and for landlord's use of property, a monetary order for unpaid rent for March and April 2015 and to recover the \$50.00 filing fee from the tenant;
 - b. The landlord agreed to withdraw his 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 25, 2015 ("10 Day Notice"), for unpaid rent in the amount of \$500.00 due on March 1, 2015.

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, binding and enforceable which settle the tenant's Application, the landlord's application scheduled for a May 19, 2015 hearing and all issues in dispute at this time arising out of this tenancy.

The landlord provided a copy of the 10 Day Notice and his application scheduled for a May 19, 2015 hearing, at my request after the hearing, as he had not provided these documents for this hearing.

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 on the premises fail to vacate the rental premises by 1:00 p.m. on May 1, 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 do not vacate the premises by 1:00 p.m. on May 1, 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 March 25, 2015, is cancelled and of no force or effect.

In order to implement the above settlement and as advised to both parties during the hearing, I issue a monetary Order in the landlord's favour in the amount of \$500.00. 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 condition #1 of the above monetary settlement. 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 condition #1 of the above monetary settlement. 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 landlord's application, scheduled for a hearing on May 19, 2015, for an order of possession for unpaid rent and for landlord's use, a monetary order for unpaid rent for March and April 2015 and to recover the \$50.00 filing fee from the tenant, is withdrawn. The landlord must bear the cost of his own filing fee for the application scheduled for a hearing on May 19, 2015.

The landlord's application with respect to these parties and this tenancy, scheduled for a hearing on May 19, 2015, is cancelled.

The tenant's Application to cancel the landlord's 1 Month Notice 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: April 09, 2015

Residential Tenancy Branch

