



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ABORIGINAL HOUSING MANAGEMENT ASSOCIATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55; and
- a monetary order for unpaid rent, pursuant to section 67.

The landlord's agent, AC ("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 she is the portfolio advisor for the landlord company named in this application and that she had authority to appear as its agent at this hearing.

Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. An "interim decision," dated March 23, 2015, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing. The interim decision found that service of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 5, 2014, ("10 Day Notice") could not be confirmed because the landlord's name and signature appeared on the proof of service of the 10 Day Notice, rather than the name and signature of a witness to the service.

The landlord testified that he served the tenant with the 10 Day Notice on December 6, 2014, by posting it to the tenant's rental unit door. The tenant confirmed receipt of the notice on this date. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice.

The landlord testified that the tenant was served with the landlord's application for dispute resolution by direct request package ("Application") on March 18, 2015, by way of registered mail. The landlord provided a Canada Post receipt and tracking number as proof of service with the landlord's Application. The landlord testified that the tenant was served with the interim decision and notice of this reconvened hearing on April 2, 2015, by way of registered mail. The landlord provided a Canada Post tracking number orally during the hearing to confirm this service. The tenant stated that he only received the notice of this reconvened hearing by way of regular mail, but that he did not receive the interim decision or the landlord's Application, including any written evidence, for this hearing. The landlord indicated that both mailings were returned to the landlord. The tenant stated that it was possible that the notifications to pick up his mail may have been discarded. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the notice of reconvened hearing and deemed served with the landlord's Application and the interim decision on March 23, 2015 and April 7, 2015, respectively, five days after each of their registered mailings.

The tenant testified that he was aware that the landlord was seeking an order of possession and a monetary order for unpaid rent against him, as he received the 10 Day Notice and he had verbal conversations with the landlord, prior to this hearing. The tenant testified that he was prepared to proceed with this hearing and deal with the landlord's entire Application, despite not having all of the landlord's documents in front of him. Accordingly, based on the sworn testimony of the parties, I find that there is no prejudice to the tenant in considering the landlord's Application at this hearing, as the tenant had notice of the landlord's claims and I find that he was deemed served with the above required documents.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

Both parties agreed that this month to month tenancy began on May 1, 2013. Monthly rent in the amount of \$510.00 is payable on the first day of each month. The landlord testified that a security deposit was not required or collected from the tenant for this tenancy. A written tenancy agreement was provided with the landlord's Application. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$2,450.00 was due on December 1, 2014. Both parties agreed that the tenant has not made any rent payments since the 10 Day Notice was issued to him.

Both parties agreed that the tenant currently owes unpaid rent of \$10.00 for August 2014 and \$510.00 for each month from September 2014 to April 2015, totalling \$4,090.00. The landlord stated that she had cashed the tenant's rent cheque of \$510.00 for May 2015 but it was unknown whether the cheque had cleared yet. The tenant stated that he had documentary proof received by his bank that the May 2015 rent cheque cleared and the funds were withdrawn from his account.

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 of \$5,620.00 by no later than August 31, 2015, for the following:
 - a. \$4,090.00 in rental arrears from August 2014 to April 2015;
 - b. \$1,530.00 in rent for June to August 2015;
2. Both parties agreed that this tenancy will continue on a month to month basis under the terms of the original tenancy agreement, in the event that the tenant abides by condition #1 of the above monetary settlement. In that event, the landlord agreed to withdraw the 10 Day Notice, dated December 5, 2014;
3. Both parties agreed that this tenancy will end by 1:00 p.m. on September 1, 2015, by which time the tenant, his son and any other occupants will have vacated the rental unit, only if the tenant does not abide by condition #1 of the above monetary settlement.

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 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 condition #1 of the above monetary settlement **and** if the tenant and any other occupants on the premises fail to vacate the rental premises by 1:00 p.m. on September 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 does not abide by condition #1 of the above monetary settlement **and** the tenant and any other occupants do not vacate the premises by 1:00 p.m. on September 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.

In the event that the tenant abides by condition #1 of the above monetary settlement, I find that the landlord's 10 Day Notice, dated December 5, 2014, is cancelled and of no force or effect. In that event, this tenancy continues on a month to month basis under the terms of the original tenancy agreement, until it is ended in accordance with the *Act*.

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: May 08, 2015

Residential Tenancy Branch

