



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MND, FF (Landlords' Application)
CNC (Tenant's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on May 19, 2015 and by the Landlords on June 7, 2015.

The Tenant applied to cancel a notice to end tenancy for cause issued to her on May 11, 2015. The Landlords applied for an Order of Possession based on unpaid rent and cause. The Landlords also applied for a Monetary Order for damage to the rental unit and to recover the filing fee.

The Tenants and both Landlords appeared for the hearing and provided affirmed testimony. The parties confirmed receipt of each other's Application and no issues were raised in relation to the service of the parties' documentary evidence to each other prior to the hearing.

The Tenant confirmed at the start of the hearing that she had received a notice to end tenancy for unpaid rent on May 11, 2015 from the Landlords which she did not dispute as she had paid the rent within the five day time limit provided by Section 46(4) (a) of the *Residential Tenancy Act* (the "Act"). The Landlord confirmed this. As a result, I dismissed the Landlord's Application for an Order of Possession for unpaid rent.

The Tenant confirmed receipt of the notice to end tenancy for cause on May 11, 2015 and disputed it on May 19, 2015. Therefore, I find the Tenant had applied to cancel the notice to end tenancy within the ten day time limit provided by 47(4) of the Act.

The parties provided evidence in relation to late payments of rent that were made during the duration of the tenancy. When the Tenant started to testify and make submissions in relation to the reasons why she had paid rent late, she indicated that she wanted to end the tenancy but needed some time to vacate the rental unit.

At this point, I offered the parties an opportunity to settle the matter through a mutual agreement to end the tenancy. The Landlords took some time to consider the Tenant's request to end the tenancy at the end of July 2015 and agreed that this was the most appropriate way to deal with this dispute.

Settlement Agreement

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.

The Landlords and Tenant agreed to end the tenancy on **July 31, 2015** at which point the Tenant is required to vacate the rental suite. The Landlords are issued with an Order of Possession effective for July 31, 2015 at 1:00 p.m. This order may be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit in accordance with the above agreement. Copies of the order are attached to the Landlords' copy of this decision. The Landlords may recover the filing fee cost of \$50.00 by deducting this amount from the Tenant's security deposit.

The parties confirmed during the hearing and at the end of the hearing that they had entered into this settlement agreement voluntarily and understood the full nature of the agreement and its meaning.

Landlord's Monetary Application

The Tenant argued that at the time of making her Application she had elected to also make a monetary claim against the Landlords. The Tenant explained that the Residential Tenancy Branch had informed her that she could only make an Application based on the notice to end tenancy and therefore, she was prevented from having her monetary claim from being heard.

I have examined the Tenant's Application and there is evidence that the Tenant attempted to make a monetary claim for compensation from the Landlords. As a result, I now turn my mind to the Residential Tenancy Branch Rules of Procedure. Rule 2.3 sets out that in the course of the dispute resolution proceeding, Arbitrators may use their discretion to dismiss unrelated claims contained in a single Application with or without leave to re-apply.

The Landlord's monetary claim related to damages to the rental unit which I determined were not sufficiently related to the notice to end tenancy. I further find that if I were to

consider the Landlords' monetary claim this would have been unfair to the Tenant who had not made her monetary claim. The Landlord also explained that he wanted to withdraw his Application to consider gathering more evidence for their monetary claim of damages after the tenancy ends.

Therefore, I dismissed the Landlords' monetary claim with leave to re-apply. Following from this, both parties are at liberty to make monetary claims. I remained on the line with both parties and provided them both with information under the Act in relation to the return of the Tenant's security deposit at the end of the tenancy.

Conclusion

The parties agreed to mutually end the tenancy on July 31, 2015. The Landlords are issued with an Order of Possession effective for this date. The Landlords may recover the filing fee from the Tenant's security deposit. The Landlords are at liberty to re-apply for a Monetary Order which was not heard in this hearing.

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: July 09, 2015

Residential Tenancy Branch

