



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, CNR, FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for an Order of Possession for unpaid rent pursuant to section 55; a monetary order for unpaid rent pursuant to section 67; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice") pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other party's materials for this hearing. Before the conclusion of this hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Background and Evidence

This tenancy began May 27, 2012 as a month to month tenancy with a rental amount of \$1400.00 payable on the first of each month. The landlord testified that he continued to hold the \$700.00 security deposit that the tenant paid on May 14, 2012. The tenant continues to reside in the rental unit. The landlord sought an order of possession and a monetary order for unpaid rent.

The landlord testified that the tenant did not pay rent of \$1400.00 due on the first of each month from February 2015 to the date of this hearing. The landlord testified that during some of those months, the tenant would provide partial payment. The tenants' payments towards rent were documented as follows;

Date of tenant's payment	Amount
March 19, 2015	\$200.00
March 25, 2015	\$250.00
March 26, 2015	\$1500.00
April 7, 2015	\$1000.00
April 22, 2015	\$400.00
May 6, 2015	\$1400.00
June 11, 2015	\$400.00
June 25, 2015	\$300.00
August 6, 2015	\$275.00

The landlord provided sworn testimony that, as of the date of this hearing the tenant owes \$3825.00 in rental arrears. He testified that, if the tenant remains in the rental unit past September 1, 2015, he will then owe \$5225.00. The landlord's evidence was not disputed by the tenant.

The landlord testified that he is having financial difficulties as a result of the lack of rental income. The tenant testified that he is doing his best but does not currently have steady work. The tenant testified to a variety of resources that he is attempting to use to improve his employment and financial situation. The landlord indicated that, besides a failure to pay rent in recent months, there were no issues with this tenancy. The landlord testified that he would make efforts on behalf of the tenant to help him relocate into more affordable housing.

The parties agreed that the tenant had failed to pay his rent in full and on time for the past several months. Both parties also agreed that, while the tenant has been making payments towards the outstanding rental arrears, the tenant is only continuing to accrue further unpaid debt by remaining in the rental unit. As a result of that meeting of minds, the landlord and the tenant were able to resolve this matter by way of a settlement.

Analysis

During the hearing, the relevant legislation, including section 26(1) and 26(2) regarding the responsibilities of a tenant and landlord with respect to payment of rent;

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

(emphasis added)

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. Given the agreement reached between the parties during the proceedings, I find that the parties have settled their dispute and the following records this settlement as a decision:

The Parties mutually agreed as follows:

- 1) The tenant agreed to vacate the rental unit on September 15, 2015 by 1.00 p.m.
- 2) The tenant agreed to pay outstanding rent to the landlord as follows;
 - i) The tenant will pay \$400.00 by August 28, 2015 at 4.00 p.m.
 - ii) The tenant will pay \$2100.00 by October 31, 2015 at 4.00 p.m.
 - iii) The tenant will pay \$2100.00 by December 4, 2015 at 4.00 p.m.
- 3) The landlord agrees to assist the tenant with relocating by providing referrals to lower priced units and buildings as well as any resources he is aware of.
- 4) These terms comprise the full and final settlement of all aspects of this dispute for both parties.

I note that the tenant's security deposit will be addressed at the end of the tenancy in accordance with the end of tenancy provisions of the *Act*.

Conclusion

To give effect to the settlement reached between the landlord and tenant, I issue a monetary order in favor of the landlord in the amount of \$4600.00 dated December 5, 2015, to be used **only if** the tenant fails to meet his agreed-upon payment arrangement by that date. The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible after any failure to abide by the monetary terms of their settlement agreement. 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.

To give further effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession dated September 15, 2015 to be used by the landlord **only** if the tenant does not comply with the terms of their agreement and fails to vacate the rental premises in accordance with their agreement. 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 vacate the premises in accordance with their 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.

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: August 24, 2015

Residential Tenancy Branch

