



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT COMMISSION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord's Application: MNR, FF, O

Tenant's Application: CNC, O

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by both the Tenant and the Landlord. Two agents for the Landlord, the Tenant, and the Tenant's advocate appeared for the hearing and provided affirmed testimony. No issues were raised in relation to the service of the parties' Applications and documentary evidence pursuant to the *Residential Tenancy Act* (the "Act"). The parties were asked about the reasons why they had made their Applications.

The Landlord applied for Monetary Order for unpaid rent and to recover the filing fee. The Landlord's Application for "Other" issues related to a request for an Order of Possession because the Tenant had failed to vacate the rental unit in accordance with the signed tenancy agreement. The Tenant applied to cancel a notice to end tenancy for cause and for "Other" issues, namely that she was disputing she had provided the Landlord a notice to end the tenancy.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party evidence provided.

Preliminary Issues & Findings

The parties confirmed that on June 24, 2015 a written tenancy agreement for the rental unit was signed for the tenancy to start on July 1, 2015. The tenancy agreement provided into evidence shows that the tenancy started on July 1, 2015 for a fixed term of three months due to the end on September 30, 2015. The agreement states that after

the fixed term ends, the “*tenancy ends and the tenant must move out of the residential premises*”. The parties confirmed that the Tenant had initialed the boxes that confirmed the tenancy would end in this manner.

The Landlord’s agent testified that the Tenant failed to pay rent for October 2015 and continues to reside in the rental unit beyond the agreed date of September 30, 2015 as detailed on the tenancy agreement. The Landlord even sent the Tenant a letter dated August 26, 2015 informing the Tenant that she was required to move out of the rental unit on this date. The Landlord’s agents confirmed that the Tenant had paid rent for November 2015 but had issued the Tenant with a letter explaining that the rent was being accepted for use and occupancy only, thereby not re-instating the tenancy.

The parties confirmed that the Tenant had not been provided with a notice to end tenancy for cause. Therefore, I dismissed the Tenant’s Application to cancel a notice to end tenancy for cause as no such notice under the Act was served to the Tenant.

In respect to the Tenant’s Application for “Other” issues, the Tenant’s advocate submitted that the letter sent to the Tenant on August 26, 2015 by the Landlord had indicated that the Tenant had given notice to end the tenancy, which she did not.

The Tenant’s advocate and Tenant were asked whether they understood that the tenancy had ended pursuant to the tenancy agreement and as set out in Section 44(1) (b) of the Act. The Tenant’s advocate stated that the Tenant was not aware that she had signed this provision of the tenancy agreement and that she should have been made aware of this at the time.

The Tenant and her advocate were informed that there was no requirement under the Act to inform the Tenant the tenancy was going to end on September 30, 2015 as the tenancy agreement stipulates this, which was signed by the Tenant. Furthermore, I found that the requirement of the Tenant and the Landlord to initial this provision of the tenancy agreement was intended to further highlight and reinforce this part of the agreement. The Tenant had an obligation to seek further information on this matter from an advocate or other agency, like the Residential Tenancy Branch, either before she signed and initialed the agreement or before she decided to continue to overhold the tenancy beyond the end date.

The Tenant’s advocate stated that she had explained to the Tenant that the tenancy had ended under the tenancy agreement. The Tenant’s advocate requested from the Landlord that the tenancy be allowed to continue. However, the Landlord confirmed that they sought an Order of Possession but were willing to mutually agree the end of the

tenancy to give the Tenant sufficient time to vacate the rental unit. The Tenant and her advocate took some time to consider the Landlord's proposal to mutually agree to end the tenancy and decided to move forward with voluntary resolution in this manner.

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 parties agreed to end the tenancy mutually on December 31, 2015 at 2:00 p.m. The Landlord is issued with an Order of Possession which is effective for this date and time. This order may be enforced through the Supreme Court of British Columbia as an order of that court. Copies of this order are attached to the Landlord's copy of this decision. The Tenant must pay rent for the duration of the tenancy. The Landlord's agents withdrew their monetary claim for the filing fee and for unpaid rent. However, the Landlord is at liberty to re-apply for any unpaid rent payable at the end of the tenancy.

The parties confirmed the voluntary nature of this agreement both during and at the conclusion of the hearing. Both files are now closed.

Conclusion

The Tenant's Application to cancel a notice to end tenancy for cause is dismissed. The Landlord withdrew the monetary claim for unpaid rent and the filing fee. The remainders of the parties' Applications were settled through mutual agreement to end the tenancy on December 31, 2015 at 2:00 p.m.

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: November 25, 2015

Residential Tenancy Branch

