



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPT, RR, FF

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 August 31, 2015 to: cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”) dated August 26, 2015; for an Order of Possession for the rental unit; to reduce rent for repairs, service or facilities agreed upon but not provided; and to recover the filing fee.

The Landlord named on the Tenant’s Application, who is also the property manager, appeared for the hearing with the owner of the rental unit. The Tenant also appeared for the hearing. All the participants provided affirmed testimony.

Preliminary Issues

The Landlord confirmed receipt of the Tenant’s Application and the accompanying written evidence. However, the Tenant denied receipt of the Landlord’s extensive documentary evidence for this hearing. The Landlord testified that the evidence had been served to the Tenant by registered mail to the rental unit. The Landlord provided a copy of the Canada Post tracking number into evidence. The Landlord allowed me to view the tracking history of the evidence on the Canada Post website.

The website shows that the documents were sent to the Tenant’s rental unit address on September 25, 2015 and that an attempted delivery of the documents was made. However, the Tenant was left with a notice card to pick up the mail on September 28, 2015. The website indicates that the on October 18, 2015 the item was unclaimed by the recipient. The Landlord submitted that the Tenant had a history of not picking up his mail as a way to avoid service of paperwork. Section 90(a) of the *Residential Tenancy Act* (the “Act”) provides a document is deemed to be received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail.

As a result, based on the undisputed evidence, I find the Landlord completed service of the documentary evidence pursuant to Section 88(c) of the Act. The hearing proceeded and I informed the parties that I would be considering the Landlord's documentary evidence in this hearing.

The Tenant confirmed that he did not need an Order of Possession for the rental unit as he was still residing in it. Therefore, I dismissed the Tenant's Application for an Order of Possession.

However, before the hearing commenced, I asked the Tenant whether he was still residing in the rental unit or whether he had plans to vacate the rental unit. The Tenant indicated that he was planning on vacating the rental unit but could not commit to a set date. At this point, the parties engaged into a conversation, turned their minds to compromise, and decided to end the tenancy and settle the Tenant's Application through mutual agreement.

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. Both parties agreed to settlement of the Tenant's Application under the following terms:

1. The parties both agreed to withdraw the Notice dated August 26, 2015.
2. The Tenant agreed to withdraw his Application to cancel the Notice.
3. The parties agreed that this tenancy will now instead end on December 31, 2015 at 1:00 p.m. The Landlord is issued with an Order of Possession which must be served to the Tenant. If the Tenant fails to vacate the rental unit on this date and time, the Landlord may enforce the Order of Possession in the Supreme Court of British Columbia as an order of that court.
4. The Tenant is still required to pay rent for the duration of the tenancy. However, neither party is prevented from using remedies under the Act to end this tenancy earlier, such as nonpayment of rent.
5. The Landlord agreed that the Tenant can end the tenancy earlier providing the Tenant provides written notice to the Landlord of the earlier date. If this is to be the case, the Landlord agreed to prorate any rent that may have already been paid by the Tenant.
6. The Landlord stated that they had also applied for an Order of Possession through the Direct Request process which involves a non-participatory hearing. The file number of the Direct Request is documented on the front page of this

decision. As the parties agreed to mutually end the tenancy, the Landlord agreed to withdraw the Direct Request application. However, the Landlord is provided leave to re-apply if the Tenant fails to pay rent during this tenancy.

7. As the tenancy ended by mutual agreement, the Tenant withdrew his Application for a reduction in rent.

In addition, as the Tenant agreed to end this tenancy mutually with the Landlord, I dismiss the Tenant's Application to recover the filing fee.

The parties confirmed their understanding and agreement of resolution in this manner both during and at the conclusion of the hearing. They also confirmed that they entered into this agreement voluntarily. Copies of the Order of Possession are attached to the Landlord's copy of this decision.

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 17, 2015

Residential Tenancy Branch

