



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, O, FF

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated September 11, 2015 ("1 Month Notice"), pursuant to section 47;
- other unspecified relief; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord and his agent, OH (collectively "landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was the owner of the rental building and that his agent had authority to speak on his behalf at this hearing. This hearing lasted approximately 83 minutes in order to allow both parties to present their submissions and to fully engage in settlement negotiations.

The tenant confirmed receipt of the landlord's 1 Month Notice on September 11, 2015. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application.

At the outset of the hearing, the tenant confirmed that he wished to withdraw his application for "other" unspecified relief. Accordingly, this portion of the tenant's application is withdrawn.

During the hearing, the landlord made a verbal request for an order of possession.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this Application from the landlord?

Background and Evidence

The landlord testified that this tenancy began on May 1, 2013. Monthly rent in the amount of \$1,310.00 is payable on the first day of each month. A security deposit of \$625.00 was paid by the tenant. A written tenancy agreement governs this tenancy but a copy was not provided for this hearing. The tenant continues to reside in the rental unit.

The landlord issued the 1 Month Notice, with an effective move-out date of September 22, 2015, stating that the "tenant has asked or sublet the rental unit/site without the landlord's written consent." The tenant seeks to cancel the 1 Month Notice and to recover the \$50.00 filing fee paid for his Application.

The landlord stated that rent for November 2015 is still unpaid. The tenant stated that he would inquire as to the status of his rent, as it was to already have been paid to the landlord, further to inquiries he made on November 20, 2015.

The landlord also confirmed that he had a pending direct request application (non-participatory hearing process) for unpaid November 2015 rent, filed with the Residential Tenancy Branch ("RTB") on November 19, 2015. The landlord noted that he had not yet received a hearing date for that application. The file number for that application appears on the front page of this decision.

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 parties agreed to set aside the existing payment terms of their written tenancy agreement until November 30, 2015, on the basis of the tenant's agreement to pay the landlord November 2015 rent for this tenancy by November 30, 2015;
2. The parties agreed to revert to the original payment terms of their written tenancy agreement for the remainder of this tenancy from December 1, 2015 to February 29, 2016;
 - a. Therefore, the tenant will pay the landlord rent due under the tenancy agreement on the first day of each month for December 1, 2015, January 1, 2016 and February 1, 2016;
3. Both parties agreed that this tenancy will end by 1:00 p.m. on February 29, 2016, by which time the tenant and any other occupants will have vacated the rental unit, in the event that the tenant abides by conditions #1 and #2 of the above settlement. In that event, the landlord's 1 Month Notice, dated September 11, 2015 is cancelled and of no force or effect;
4. Both parties agreed that this tenancy will end pursuant to a two (2) day Order of Possession, if the tenant defaults on any rent payments under conditions #1 or #2 of the above monetary settlement;
5. The landlord agreed to withdraw his direct request application for this tenancy and to send in a signed and dated letter to the RTB by November 23, 2015 confirming same;
6. The tenant agreed to bear the cost of the \$50.00 filing fee paid for his Application;
7. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the tenant's Application at this hearing.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final and binding and enforceable, which settle all aspects of this dispute.

Conclusion

To give effect to the settlement reached between the parties and as discussed with them during the hearing, I issue the attached two (2) day Order of Possession to be used by the landlord **only** if the tenant does not abide by conditions #1 or #2 of the above settlement. As advised to both parties during the hearing, this Order of Possession expires. This two day **Order of Possession expires on March 31, 2016**

and it cannot be served upon the tenant after **March 31, 2016**. 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 conditions #1 or #2 of the above settlement. 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 conditions #1 and #2 of the above settlement, I find that the landlord's 1 Month Notice, dated September 11, 2015, is cancelled and of no force or effect. In that event, this tenancy continues until 1:00 p.m. on February 29, 2016.

To give effect to the settlement agreement between the parties, I order that the existing monetary terms of the written tenancy agreement between these parties and the dates when payments are due are to be amended as per condition #1 of the above settlement. Should this tenancy continue after November 30, 2015, the terms of the written tenancy agreement will take effect for the remainder of the tenancy until February 29, 2016, as per condition #2 of the above settlement.

The tenant's application for "other" unspecified relief was withdrawn.

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 23, 2015

Residential Tenancy Branch

