



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KEKINOW NATIVE HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, OPB, MNR, MNDC, FF

Introduction

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

- an order of possession for cause and for breach of an agreement, pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlord's agent, TF ("landlord") and the two tenants (male and female) 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 testified that she was the tenant relations coordinator for the landlord company named in this application and that she had authority to speak as an agent on its behalf at this hearing.

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

The landlord confirmed receipt of the tenants' written evidence package on November 24, 2015. The landlord confirmed that she had no objection to me considering the tenants' written evidence package, despite the fact that it was received less than 7 days before this hearing, contrary to Rule 3.15 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. In accordance with sections 88 and 90 of the *Act*, I find that the landlord was duly served with the tenants' written evidence package. As this matter settled, I did not need to consider the tenant's written evidence at this hearing or in my decision. In any event, the evidence was irrelevant to this hearing.

At the outset of the hearing, the landlord confirmed that rent for November 2015 had been paid by the tenants. The landlord stated that the tenants had until the end of the day on this hearing date, December 1, 2015, to pay their rent for December 2015. The landlord testified that the landlord was no longer seeking any monetary orders against the tenants, except for the filing fee. Accordingly, the landlord's Application for a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, is withdrawn.

The landlord requested an amendment to the landlord's Application to correct the full name and spelling of the male tenant's name. The male tenant consented to this amendment. As per section 64(3)(c) of the *Act*, I amend the landlord's application accordingly and the change is now reflected in the style of cause for this matter.

Issues to be Decided

Is the landlord entitled to an order of possession for cause or for breach of an agreement?

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

Background and Evidence

Both parties agreed that this tenancy began on November 1, 2012 as per the tenancy agreement but that the tenants moved in around October 24, 2012. Both parties agreed that as per the tenancy agreement, an economic rent of \$1,598.00 is due each month. Both parties agreed that the tenants currently receive a subsidy of \$1,069.00 per month for rent, so the tenants pay \$529.00 per month themselves, towards rent. Both parties agreed that a security deposit of \$500.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was provided for this hearing. The tenants continue to reside in the rental unit.

Both parties agreed that a previous hearing was held for this tenancy between the same parties on August 21, 2015 before a different Arbitrator. The file number for that hearing appears on the front page of this decision. The previous Arbitrator dismissed the tenants' application to cancel the landlord's 1 Month Notice to End Tenancy for Cause, dated June 10, 2015, with an effective move-out date of July 31, 2015. The notice stated the following reason for ending this tenancy:

- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The landlord failed to verbally request an order of possession at the previous hearing. The landlord confirmed that she wished to request an order of possession based on the previous Arbitrator's decision at this hearing. The tenants stated that they received a copy of the previous decision on September 16, 2015. The tenants confirmed that they read and understood the decision, which ended this tenancy and required them to vacate the rental unit. The tenants stated that they wished to reargue the reason indicated on the 1 Month Notice at this hearing and that they wished to review that decision for fraud. I advised the tenants that they had not filed a review application and so I could not consider that issue at this hearing. I further advised the tenants that the previous Arbitrator had already made a decision about the 1 Month Notice so I was *res judicata* and unable to rehear the same matter again.

The landlord stated that she provided the tenants until September 30, 2015 and then October 31, 2015, to vacate the rental unit but they failed to do so. The landlord stated that she was attempting to provide the tenants with more time to find a new unit. Both parties agreed that the landlord issued "use and occupancy only" receipts for rent paid in September, October and November 2015. The landlord confirmed that this tenancy had not been reinstated.

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. Both parties agreed that this tenancy will end by 1:00 p.m. on January 31, 2016, by which time the tenants and any other occupants will have vacated the rental unit;
2. The landlord agreed to bear the cost of the \$50.00 filing fee for this Application;
3. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the landlord's Application at this hearing; and
4. Both parties agreed that the \$500.00 security deposit is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

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 advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenants and any other occupants fail to vacate the rental premises by 1:00 p.m. on January 31, 2016. The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order in the event that the tenants and any other occupants fail to vacate the rental premises by 1:00 p.m. on January 31, 2016. 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.

The landlord must bear the cost of the \$50.00 filing fee for this Application.

The landlord's Application for a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, is 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: December 01, 2015

Residential Tenancy Branch

