



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, OPM, MNR, FF; CNR, OLC, FF

Introduction

This hearing dealt with the landlords' application against both tenants, pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession based on the tenant's notice to end tenancy and a mutual agreement to end tenancy, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing dealt with tenant AS' ("tenant") application against both landlords, pursuant to the *Act* for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"), pursuant to section 46;
- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62;
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The two landlords and their agent, RW (collectively "landlords") 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 two landlords provided written confirmation that their agent had authority to speak on their behalf at this hearing.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

At the conclusion of this hearing, the landlords agreed that “tenant ML,” the other tenant-respondent named in the landlords’ application, was not required to be named as a party, as she had already vacated the rental unit by September 30, 2015 and they were not seeking any orders against her at this hearing. Accordingly, this settlement agreement and orders are not binding against tenant ML, as she is no longer a tenant at this rental unit and her tenancy agreement was terminated by agreement with the landlords.

Issues to be Decided

Should the landlords’ 10 Day Notice be cancelled?

Are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary award for unpaid rent?

Is the tenant entitled to an order requiring the landlords to comply with the *Act, Regulation* or tenancy agreement?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

Both parties agreed that this month-to-month tenancy began on June 1, 2015. Monthly rent in the amount of \$1,100.00 is payable on the first day of each month. Both parties agreed that a security deposit of \$550.00 was paid and the landlords continue to retain this deposit. A written tenancy agreement was provided for this hearing. The tenant continues to reside in the rental unit.

The landlords seek an order of possession based on tenant ML’s notice to vacate the rental unit and their allegation that the tenant also agreed to vacate the rental unit by November 1, 2015. The tenant denies this allegation. The landlords seek a monetary order for unpaid rent and to recover the \$50.00 filing fee paid for their application.

The tenant seeks to cancel a 10 Day Notice, which the landlords stated that they never served upon the tenant. The tenant alleged that the landlords refused to accept rent from him. The tenant also claimed that he is entitled to receive a 2 Month Notice to End Tenancy for Landlord’s Use of Property (“2 Month Notice”) because the landlords listed the rental unit for sale. The landlords stated that their sale listing expired and the tenant

had already agreed to leave the rental unit in any event. The tenant also seeks to recover the \$50.00 filing fee paid for his application.

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 the tenant will pay the landlords a total of \$3,300.00 by January 20, 2016, by way of interac e-transfer;
2. Both parties agreed that the above payment in condition #1 satisfies all outstanding rent owed by the tenant to the landlords from November 1, 2015 to January 31, 2016;
3. Both parties agreed that the landlords will not cash and will return the tenant's December 2015 rent cheque in the amount of \$1,100.00, to the tenant by January 7, 2016;
4. Both parties agreed that if the tenant abides by condition #1 of this settlement agreement, this tenancy will continue until it is ended in accordance with the *Act*;
5. Both parties agreed that if this tenancy continues as per condition #4 of this settlement agreement, that both parties will meet on January 21, 2016 to sign a new tenancy agreement;
6. Both parties agreed that if the tenant does not abide by condition #1 of this settlement agreement, this tenancy will end by 4:00 p.m. on January 31, 2016, by which time the tenant and any other occupants will have vacated the rental unit;
7. Both parties agreed to bear the cost of their own \$50.00 filing fees paid for their applications;
8. Both parties agreed that this settlement agreement constitutes a final and binding resolution of both parties' applications 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 advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlords **only** if the tenant does not abide by condition #1 of the above agreement **AND** the tenant and any other occupants fail to vacate the rental premises by 4:00 p.m. on January 31, 2016. The landlords are 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 condition #1 of the above agreement **AND** the tenant and any other occupants fail to vacate the rental premises by 4:00 p.m. on January 31, 2016. 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 order to implement the above settlement reached between the parties and as advised to both parties during the hearing, I issue a monetary Order in the landlords' favour in the amount of \$3,300.00. I deliver this Order to the landlords in support of the above agreement for use **only** in the event that the tenant fails to abide by condition #1 of the above agreement. The landlords are provided with this Order in the above terms and the tenant must be served with a copy of this Order in the event that the tenant fails to abide by condition #1 of the above 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.

Both parties must bear the cost of their own \$50.00 filing fees paid for their applications.

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: January 06, 2016

Residential Tenancy Branch

