



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, FF; CNC

Introduction

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

- an order of possession for unpaid rent and cause, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated October 31, 2015 ("1 Month Notice"), pursuant to section 47.

The landlord and his agent wife, SB (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 his agent had authority to speak on his behalf at this hearing. The landlord's son did not testify as a witness at this hearing, as this matter settled between the parties.

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.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for cause?

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for his application?

Background and Evidence

Both parties agreed that this month-to-month tenancy began on October 1, 2015. The landlord stated that monthly rent in the amount of \$650.00 is payable on the first day of each month. The tenant stated that rent is \$600.00 per month as per a verbal agreement with the landlord and it would only be raised to \$650.00 if his girlfriend moved into the rental unit but she did not. Both parties agreed that a security deposit of \$325.00 was paid and the landlord continues to retain this deposit. A written tenancy agreement was provided for this hearing. The tenant continues to reside in the rental unit.

The landlord seeks an order of possession for cause based on the 1 Month Notice, while the tenant disputes the notice. The landlord issued the 1 Month Notice with an effective move-out date of November 4, 2015, for the following reasons:

- *Tenant or a person permitted on the property by the tenant has:*
 - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
 - *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;*
- *Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.*

The landlord seeks an order of possession for unpaid rent based on two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities, one dated November 4, 2015 with an effective move-out date of November 14, 2015, and another dated November 10, 2015 with an effective move-out date of November 18, 2015 ("two 10 Day Notices"). The tenant disputed both notices and a future hearing was scheduled for January 7, 2016 at 11:00 a.m. The file number for that application appears on the front page of this decision.

The landlord also seeks a monetary order of \$1,950.00 from the tenant plus the \$50.00 filing fee paid for his application. The tenant stated that he paid rent of \$650.00 for October 2015, rent of \$600.00 for November 2015, and no rent for December 2015 or January 2016. The landlord disputed this, stating that the tenant only paid \$600.00 for rent in October 2015 and provided a receipt for this payment. The landlord confirmed

that the tenant did not pay rent totalling \$1,950.00 from November 2015 to January 2016.

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 tenant and any other occupants will have vacated the rental unit;
2. Both parties agreed that the tenant will pay the landlord a total of \$1,200.00 by January 25, 2016;
3. Both parties agreed that the above payment in condition #2 satisfies all outstanding rent from October 1, 2015 to January 31, 2016;
4. The landlord agreed to bear the cost of the \$50.00 filing fee for his Application;
5. Both parties agreed that this settlement agreement constitutes a final and binding resolution of both parties' applications at this hearing;
6. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the tenant's application scheduled to be heard in the future on January 7, 2016 at 11:00 a.m., the file number of which appears on the front page of this decision, and that hearing is hereby cancelled by way of verbal agreement from the tenant 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

landlord **only** if the tenant 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 must be served with this Order in the event that the tenant and any other occupants fail to vacate the rental premises by 1:00 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 landlord's favour in the amount of \$1,200.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenant fails to abide by condition #2 of the above agreement. The landlord is 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 #2 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.

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

The upcoming hearing on January 7, 2016 at 11:00 a.m. for the tenant's application, the file number of which appears on the front page of this decision, is hereby cancelled.

The landlord's 1 Month Notice, dated October 31, 2015, and two 10 Day Notices, dated November 4, 2015 and November 10, 2015, are all cancelled and of no force or effect.

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

