



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CITY OF VANCOUVER
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes 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, pursuant to section 55;
- a monetary order for unpaid rent, pursuant 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 cross-application pursuant to the *Act* for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated November 27, 2015 ("1 Month Notice"), pursuant to section 47.

The tenant and his advocate, KS (collectively "tenant") and the landlord's agent, DS ("landlord") 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 tenant confirmed that his advocate had permission to speak on his behalf at this hearing. The landlord confirmed that he was the resident manager for the rental building and that he had authority to speak on behalf of the landlord company named in both applications as an agent at this hearing. This hearing lasted approximately 83 minutes in order to allow both parties to fully negotiate a settlement of their claim.

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.

The tenant confirmed that he attempted to submit documentary evidence, including photographs and rent receipts, at a Residential Tenancy Branch ("RTB") office on the day of this hearing. As this evidence would have been deemed received by the landlord less than 14 days prior to this hearing and was in support of the tenant's application, I advised the tenant that I would not

consider this evidence at the hearing, as per Rule 3.13 of the RTB *Rules of Procedure* ("ROP"). In any event, this matter settled and I was not required to consider any written evidence.

The landlord confirmed that he personally served the tenant with the 1 Month Notice on December 1, 2015. The landlord provided a signed, witnessed proof of service with his application. The tenant confirmed receipt of the 1 Month Notice but he could not recall the exact date. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the 1 Month Notice on December 1, 2015. The tenant filed his application to dispute the notice on December 9, 2015.

Issues to be Decided

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

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

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

Background and Evidence

The landlord testified that this month-to-month tenancy began on July 1, 2014, while the tenant testified that it began on July 9, 2014. Both parties agreed that monthly rent in the amount of \$700.00 is payable on the first day of each month. Both parties agreed that a security deposit of \$350.00 was paid and the landlord continues to retain this deposit. A copy of the written tenancy agreement was provided for this hearing. Both parties agreed that the tenant had not yet vacated the rental unit.

Both parties agreed that a "previous hearing" was held on January 28, 2016, where both parties attended. The file number for that hearing appears on the front page of this decision. A different Arbitrator made the following order at that hearing:

The landlord must permit the tenant access to the rental unit between the hours of 7:00 a.m. and 5:00 p.m. every day.

This Order shall remain in effect until such time the tenancy is determined to be at an end or the Do Not Occupy notice is removed or changed by the proper authority, whichever occurs first.

The landlord seeks an order of possession based on the 1 Month Notice. The tenant disputes the notice. The notice indicates an effective move-out date of January 1, 2016. The notice indicates the following reasons for ending the tenancy:

- *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;*
 - *put the landlord's property at significant risk.*

The landlord also seeks a monetary order of \$669.80 from the tenant for January 2016 rental arrears. Both parties agreed that an Arbitrator at a previous hearing awarded the above monetary amount to the landlord. The landlord stated that the tenant paid the above amount for rent but it was applied first against the monetary order owing by the tenant. The tenant agreed that he currently owes the above amount to the landlord for rental arrears. The landlord also seeks to recover the \$50.00 filing fee for its 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 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;
2. Both parties agreed that the tenant will not be required to pay the landlord \$700.00 for February 2016 rent;
3. Both parties agreed that the tenant owes the landlord a total of \$669.80 for rent arrears;
4. The landlord agreed to bear the cost of the \$50.00 filing fee for its application;
5. 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.

The tenant's advocate had authority and confirmed the above information on behalf of the tenant, as the tenant unexpectedly and without warning disconnected from the hearing early at approximately 12:15 p.m., when the hearing ended at approximately 12:23 p.m. The tenant did not call back into the hearing after disconnecting.

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 February 29, 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 February 29, 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 \$669.80. 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 its application.

As advised to both parties during the hearing, the Arbitrator's decision and order from the hearing on January 28, 2016, as noted earlier in this decision, is still in full force and effect. Therefore, the tenant is not permitted to occupy the rental unit, he is only permitted to have access to remove personal belongings and clean the rental unit.

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: February 01, 2016

Residential Tenancy Branch

