



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PRO-BIZ ENTERPRISES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF; CNR, MNR, MNDC, MNSD, ERP, RP, LRE, FF

Introduction

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

- an order of possession for unpaid rent, pursuant to section 47;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

This hearing also dealt with tenant OS' ("tenant") cross-application against the landlord, pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated December 5, 2015 ("10 Day Notice"), pursuant to section 46;
- a monetary order for the cost of emergency repairs to the rental unit, pursuant to section 33;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of the security deposit, pursuant to section 38;
- an order to the landlord to make emergency repairs for health or safety reasons, pursuant to section 33;
- an order to the landlord to make repairs to the rental unit, pursuant to section 33;
- an order to suspend or set conditions on the landlord's right to enter the rental unit, pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's agent, KC ("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. "Tenant AS," the other tenant named in only the landlord's application, did not attend this hearing. The landlord confirmed that she was

the director of the landlord company named in both applications and that she had authority to speak on its behalf as an agent at this hearing. This hearing lasted approximately 76 minutes in order to allow both parties to present their submissions and to fully engage in settlement negotiations.

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 receipt of the landlord's 10 Day Notice. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice.

Preliminary Issues

At the outset of the hearing, the tenant confirmed that he was not aware that the landlord was seeking an order of possession against him because his copy of the landlord's application did not indicate this claim. My copy of the landlord's application had this claim indicated. I advised the tenant that because he made an application to cancel the landlord's 10 Day Notice, I was required by section 55 of the *Act* to make a decision as to whether the landlord was entitled to an order of possession, regardless of whether the landlord made that application herself.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to increase the landlord's monetary claim from \$9,500.00 to \$24,000.00 to include all unpaid rent to date. The tenant is aware that rent is due on the first day of each month as per his tenancy agreement. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required him to vacate earlier, for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay his rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claims for increased rent, as the tenant agreed at the hearing that he owes \$24,000.00 in unpaid rent to the landlord.

Issues to be Decided

Is either party entitled to relief as noted above?

Background and Evidence

Both parties agreed that that this tenancy began on November 1, 2015. Monthly rent in the amount of \$8,000.00 is payable on the first day of each month. A security deposit of \$4,000.00 was paid by the tenant and the landlord continues to retain this deposit. A move-in condition inspection report was completed and signed by both parties. A written tenancy agreement was provided for this hearing. The tenant continues to reside in the rental unit. The tenant confirmed that tenant AS, who is the landlord's son, no longer lives in the rental unit. Both parties agreed that tenant AS never signed the tenancy agreement or paid rent to the landlord.

The landlord issued the 10 Day Notice, with an effective move-out date of December 15, 2015, for \$8,000.00 in unpaid rent due on December 1, 2015. The tenant seeks to cancel the 10 Day Notice and filed his application on December 10, 2015.

Both parties agreed that the tenant failed to pay rent totalling \$24,000.00 to the landlord for December 2015, January 2016 and February 2016. The landlord sought a monetary order for \$24,000.00 in unpaid rent, \$1,500.00 for failure to perform yard cleaning and \$100.00 for the application filing fee. The tenant sought an order requiring the landlord to replace the hot water tank in the rental unit, a monetary order totalling \$875.21, including repair costs of \$210.01, cable television costs of \$221.50, and gas utility costs of \$443.70, and to recover the \$50.00 application filing fee.

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 tenant agreed to pay the landlord \$16,000.00 for December 2015 and January 2016 rent by February 3, 2016, by way of a bank draft;
2. The tenant agreed to pay the landlord \$8,000.00 for February 2016 rent by February 12, 2016, by way of a bank draft;
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 10 Day Notice, dated December 5, 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, at the landlord's own cost, to replace the hot water tank in the rental unit by February 9, 2016;
6. Both parties agreed to bear their own costs for the filing fees paid for their applications;
7. Both parties agreed that this settlement agreement constitutes a final and binding resolution of both parties' applications, including for their monetary orders, at this hearing;
8. Both parties agreed that this settlement agreement, order of possession and monetary order issued at this hearing, is binding against the landlord and the tenant only, not tenant AS.

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 confirmed that he was agreeable to settling this matter on the above terms, without his lawyer present.

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 and/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 15, 2016** and it cannot be served upon the tenant after **March 15, 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 and/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 10 Day Notice, dated December 5, 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 conditions #1 and #2 of the above settlement.

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 \$24,000.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenant does not pay the landlord \$24,000.00 in accordance with conditions #1 and #2 of the above monetary agreement. The landlord is provided with this Order in the above terms and the tenant must be served with a copy of this Order as soon as possible after the tenant does not pay the landlord \$24,000.00 as per conditions #1 and #2 of the above monetary 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.

I order that this settlement agreement, order of possession and monetary order are binding against the landlord and tenant only, not tenant AS.

Both parties must bear their own costs for the filing fees for their applications. The tenant's application to obtain a return of the security deposit is dismissed with leave to reapply.

The tenant's security deposit is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

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 02, 2016

Residential Tenancy Branch

