



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards



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A matter regarding WINGOLD CONSTRUCTION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC, DRI, AAT, LAT

Introduction

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

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause, dated November 26, 2015 ("1 Month Notice"), pursuant to section 66;
- cancellation of the landlords' 1 Month Notice, pursuant to section 47;
- an order regarding a disputed additional rent increase, pursuant to section 43;
- an order to allow access to or from the rental unit for the tenant or the tenant's guests, pursuant to section 70; and
- authorization to change the locks to the rental unit, pursuant to section 70.

The landlord's two agents, "landlord KK" and "landlord SB" (collectively "landlord") and the tenant and her advocate JM (collectively "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. Landlord KK confirmed that he was the property manager and landlord SB confirmed that she is the administrative assistant, both of whom work for the "landlord company" named in this application. Both of the landlord's agents confirmed that they had authority to represent the landlord company at this hearing. This hearing lasted approximately 58 minutes in order to allow both parties to fully present their submissions and to negotiate a settlement of their claim.

Landlord KK confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application and the tenant was duly served with the landlord's written evidence.

Landlord KK stated that the tenant was served with the 1 Month Notice on November 26, 2015, by way of placing it under her rental unit door. The tenant testified that she received the landlord's 1 Month Notice on December 2, 2015. The tenant confirmed that she was in the hospital and a mental health facility from November 23 until December 23, 2015. The tenant stated that another tenant in the same rental building gave her the notice when she returned home for one day on December 2, 2015, after she allowed him access to her rental unit. Although the tenant was not served with the 1 Month Notice in accordance with section 88 of the *Act*, as placing a notice under the door is not permitted, I find that the tenant received the notice as she disputed it in this application. Therefore, I find that the tenant was sufficiently served with the landlord's 1 Month Notice in accordance with section 71(2)(c) of the *Act*.

At the outset of the hearing, the tenant confirmed that she wanted to withdraw her application for an order regarding a disputed additional rent increase, an order to allow access to or from the rental unit for the tenant or the tenant's guests, and authorization to change the locks to the rental unit. The tenant stated that she did not require the above relief and she may have applied for it in error due to her mental illness. Accordingly, these portions of the tenant's Application are withdrawn.

Issues to be Decided

Should the tenant be permitted more time to make her application to cancel the landlord's 1 Month Notice?

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

Background and Evidence

The tenant stated that this month-to-month tenancy began on April 15, 2010. Both parties agreed that monthly rent in the amount of \$743.00 is payable on the first day of each month. Landlord KK confirmed that the tenant paid a security deposit of \$350.00 and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit. A copy of the written tenancy agreement was not provided for this hearing.

The landlord issued the 1 Month Notice, which has an effective move-out date of December 31, 2015, to the tenant 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;*
 - *put the landlord's property at significant risk;*
- *Tenant has caused extraordinary damage to the unit/site or property/park.*

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 March 31, 2016, by which time the tenant and any other occupants will have vacated the rental unit;
2. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the tenant's Application 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 March 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 March 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.

The landlord's 1 Month Notice, dated November 26, 2015, is cancelled and of no force or effect.

The tenant's application for an order regarding a disputed additional rent increase, an order to allow access to or from the rental unit for the tenant or the tenant's guests, and authorization to change the locks to the rental unit, 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: February 03, 2016

Residential Tenancy Branch

