



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR; CNR

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; and
- a monetary order for unpaid rent, pursuant to section 67.

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 23, 2016 ("10 Day Notice"), pursuant to section 46.

The landlord and his agent, ZS (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. This hearing lasted approximately 39 minutes in order to allow both parties to fully negotiate a settlement of this matter.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

Preliminary Issue – Amendment to both Parties' Applications

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to remove "respondent RG" as a tenant-respondent party. The name of this party appears on the front page of this decision. The style of cause on this decision and corresponding two orders reflect this change. The landlord said that he did not wish to pursue his claim against respondent RG because he could not prove that he was "tenant" in this tenancy. Both parties agreed that respondent RG never signed the tenancy agreement and did not move into the rental unit. Therefore, this decision and corresponding monetary order and order of possession are not enforceable against respondent RG.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to include the correct surname of the tenant, as she inadvertently included the wrong surname. The tenant consented to this amendment. I also amend the tenant's application to correct the spelling of the landlord's surname. The landlord consented to this amendment.

Preliminary Issue – Dismissal of Tenant's Application

The tenant confirmed that she did not serve the landlord with the tenant's application for dispute resolution hearing package. Section 59(3) of the *Act* requires an application to be served to the other party, in order to allow the other party to respond to the claim. As the tenant did not serve her application to the landlord and as advised to both parties during the hearing, I dismiss the tenant's application to cancel the landlord's 10 Day Notice with leave to reapply.

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, turned their minds to compromise and achieved a resolution of the landlord's application.

Both parties agreed to the following final and binding settlement of the landlord's application:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on October 10, 2016, by which time the tenant and any other occupants will have vacated the rental unit;
2. The tenant agreed to pay the landlord a total of \$5,100.00 by no later than December 31, 2016, which the landlord agreed satisfies all rent owed for this tenancy for the period from April 1, 2016 to October 10, 2016;
3. Both parties agreed that the landlord's 10 Day Notice, dated August 23, 2016, is cancelled and of no force or effect;
4. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the landlord's application at this hearing.

These particulars comprise the full and final settlement of the landlord's application. 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, binding and enforceable, which settles the landlord's application.

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 October 10, 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 October 10, 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 \$5,100.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenant does not 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 as soon as possible after the tenant does not 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's 10 Day Notice, dated August 23, 2016, is cancelled and of no force or effect.

The tenant's application to cancel the landlord's 10 Day Notice, dated August 23, 2016, is dismissed with leave to reapply.

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: October 06, 2016

Residential Tenancy Branch