



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, OLC, RP, O

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants on October 12, 2016. The Tenants applied for the following issues: to cancel a notice to end tenancy for the Landlord’s use of the rental property; for the Landlord to comply with the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; for the Landlord to complete repairs to the rental unit; and, for “Other” undisclosed issues.

The Landlord, Landlord’s legal counsel, and both Tenants appeared for the hearing. The Landlord, a witness for the Landlord who was also his daughter, and both Tenants provided affirmed testimony during the hearing.

Legal counsel for the Landlord confirmed receipt of the Tenants’ Application and their documentary evidence prior to this hearing. Legal counsel also confirmed that the Landlord had not provided any evidence prior to this hearing. The hearing process was explained to the parties and they had no questions about the proceedings.

At the start of the hearing, the Tenant confirmed service of a 2 Month Notice to End Tenancy for Landlord’s Use of Property (the “2 Month Notice”) dated September 30, 2016. Therefore, I determined that the Tenants applied to dispute the 2 Month Notice within the 15 day time limit provided for by Section 49(8) of the Act.

The parties also confirmed that the Tenants had been served with a prior 2 Month Notice dated September 29, 2016 which was withdrawn because the contents did not comply with the Act and therefore was not the subject of this dispute. Both parties were then given a full opportunity to present their evidence, make submissions to me, and cross examine the other party and the witness on the evidence provided.

Section 63 of the Act states that an 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.

After the parties had finished their evidence presentation and cross examination of the parties, I provided the parties an opportunity to reach mutual settlement of the dispute. The parties discussed the issues between them and turned their minds to compromise. After a number of negotiations on both sides, including an opportunity for the Landlord to consult privately with his legal counsel, the parties were able to reach a mutual resolution of their dispute. This is detailed as follows.

Settlement Agreement

1. The parties agreed to end the tenancy mutually on January 31, 2016. However, the Tenants may vacate earlier than this date provided they give written notice to the Landlord of the date they intend to vacate the rental unit. This written notice to end the tenancy does not include a time limit that would be otherwise required by the Act as the purpose is to inform the Landlord of the end date of the tenancy rather than to provide the Landlord with sufficient legal notice.
2. At the time of this hearing, the Tenants had withheld their November 2016 rent and had no legal authority to do so pending the outcome of this hearing. Therefore, pursuant to this agreement, the Tenants must pay their rent to the Landlord forthwith for November 2016. If they fail to do so the Landlord is at liberty to issue the Tenants with a notice to end tenancy for unpaid rent and end the tenancy prior to the date agreed in this hearing.
3. The Tenants are given permission by the Landlord to withhold rent for December 2016 as compensation under the 2 Month Notice. If they vacate any time before December 31, 2016, the Landlord will then pay the Tenants an additional \$1,600.00 (one month's rent) as further compensation.
4. If the Tenants remain in the rental unit after January 1, 2017, they must pay rent on January 1, 2017 and the tenancy will legally end on January 31, 2016. If the Tenants vacate the rental unit between January 1, 2016 and January 31, 2016 pursuant to the agreed date, the Landlord agrees to provide the Tenants with their additional \$1,600.00 compensation for mutually ending the tenancy after January 31, 2017.
5. The parties confirmed that the intended net amount to be obtained in relief by the Tenants is two month's rent as compensation for mutually ending the tenancy.

Pursuant to the above agreement, the Landlord is granted with an Order of Possession effective for January 1, 2016 at 1:00 p.m. This order may be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenants fail to vacate the rental unit by this agreed date and time.

The Tenants are provided with a Monetary Order in the amount of \$1,600.00 to be used for enforcement **only if** the Landlord fails to provide them with the additional compensation agreed after the Tenants vacate the rental unit. This order may be enforced in the Small Claims Division of the Provincial Court as an order of that court.

The parties were informed that the rights and obligations of the Tenants in respect to leaving the condition of the rental unit, and the Landlord in dealing with the Tenants' security deposit, at the end of the tenancy still apply. The parties are encouraged to apprise and educate themselves on the strict requirements and consequences of the Act in relation to the above.

The parties confirmed during the hearing and at the end of the hearing that they had entered into this settlement agreement voluntarily and understood the full nature of the agreement and its meaning and that it was made in full satisfaction of the Tenants' Application.

Conclusion

The Tenants' Application is dismissed as the parties reached mutual resolution in this matter as detailed above. This file is now closed. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 10, 2016

Residential Tenancy Branch