



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPL, MNR, MND, MNSD, O, FF; MT, CNC, ERP, RR, FF

Introduction

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

- an order of possession for unpaid rent and for landlord's use of property, pursuant to section 55;
- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- other unspecified remedies; and
- authorization to recover the filing fee for her application, pursuant to section 72.

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

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause, dated August 23, 2016 ("1 Month Notice"), pursuant to section 66;
- cancellation of the landlords' 1 Month Notice, pursuant to section 47;
- an order to the landlord to perform emergency repairs, pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for her application, pursuant to section 72.

The landlord's agent, RM ("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 he was the son of the landlord named in this application and he had authority to speak on her behalf at this hearing. The landlord provided a signed, written authorization with her application, confirming the above agency authority. This hearing lasted approximately 56 minutes in order to allow both parties 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.

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 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 \$2,000.00 by November 23, 2016;
 - a. The landlord agreed that the above payment satisfies all outstanding rent owed by the tenant for this tenancy from October 1, 2016 until November 30, 2016;
2. The tenant agreed to pay the landlord \$625.00 by December 7, 2016;
 - a. The landlord agreed that the above payment satisfies all outstanding rent owed by the tenant for this tenancy from August 1 to 31, 2016;
 - b. The landlord agreed that the above payment satisfies all outstanding non-sufficient funds ("NSF") fees owed by the tenant for this tenancy from February 1 until November 30, 2016;
3. The tenant agreed to pay the landlord \$1,000.00 by December 1, 2016 for December 2016 rent, as per the parties' written tenancy agreement;
4. Both parties agreed that this tenancy will end by 1:00 p.m. on January 1, 2017, 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 and #3 of the above settlement. In that event, the landlord's 1 Month Notice, dated August 23, 2016, is cancelled and of no force or effect;
5. Both parties agreed that this tenancy will end pursuant to a fifteen (15) day Order of Possession, if the tenant does not abide by conditions #1 or #2 or #3 of the above settlement;
6. The landlord agreed to pay for the cost of fixing the broken lock at the rental unit, which the landlord estimated at \$181.65;
7. Each party agreed to bear their own costs for the \$100.00 filing fees paid for their applications;

8. 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, binding and enforceable, which settle all aspects of this dispute.

The landlord confirmed that he understood and agreed that this settlement agreement was legal and binding upon his mother, the landlord named in this application, as he was acting as her agent at this hearing.

Conclusion

To give effect to the settlement reached between the parties and as discussed with them during the hearing, I issue the attached fifteen (15) day Order of Possession to be used by the landlord **only** if the tenant does not abide by conditions #1, #2, #3 or #4 of the above settlement. 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, #2, #3 or #4 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 and #3 of the above settlement, I find that the landlord's 1 Month Notice, dated August 23, 2016, is cancelled and of no force or effect. In that event, this tenancy continues only until 1:00 p.m. on January 1, 2017.

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 \$2,625.00, the current amount owing for this tenancy. 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 conditions #1 and #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 conditions #1 and #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.

I notified the landlord that as the future rent amount of \$1,000.00 for December 2016 is not yet due as per the tenancy agreement, I could not issue a monetary order for this amount. I notified the landlord that he could file an application for dispute resolution to obtain a monetary award for the above amount, if it is unpaid after the due date.

Each party must bear their own costs for the \$100.00 filing fees paid for their applications.

The landlord's application to retain the tenant's 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: November 14, 2016

Residential Tenancy Branch