



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, OPT

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 December 1, 2016. The Tenants applied for the Landlord to comply with the *Residential Tenancy Act* (the “Act”), and for an Order of Possession for the rental unit.

The Tenants, the Tenant’s legal advocate, and the Landlord appeared for the hearing. The Tenants, the Landlord, and a witness for the Tenants provided affirmed testimony during the hearing.

Preliminary Issues

The Tenants had brought this Application against the Landlords because on June 15, 2016 a hearing had taken place between the same parties with a different Arbitrator, the file numbers for which appear on the front page of this Decision. That Arbitrator helped the parties to craft a settlement agreement which required the Tenants to pay their rent on the first day of each month from July 1, 2016 to the end of 2016.

In addition, the Landlord was issued with a Monetary Order for the amount of \$100.00 as well as a conditional Order of Possession, both of which were dated June 15, 2016. The Order of Possession was to be enforced only if the Tenants failed to pay their rent on time pursuant to the terms and conditions laid out in the June 15, 2016 decision.

However, the Landlord started the enforcement process of the Order of Possession in the Supreme Court after he alleged that the Tenants failed to pay rent for November 2016. The Landlord had applied for a Writ of Possession. However, the parties confirmed in the hearing that the Tenants had successfully applied for a stay of the Supreme Court proceedings on the basis of their claim that they attempted to pay the

Landlord rent. The parties confirmed during this hearing that those proceedings had been stayed by the Supreme Court pending the outcome of this hearing.

As a result, I continued to hear evidence from both parties in this matter. Firstly, the Tenants confirmed that they were still residing at the rental unit. Therefore, I dismissed their Application for an Order of Possession to get back into the rental unit.

Secondly, the Tenants indicated that they wanted to end the tenancy but requested that the tenancy be ended on January 31, 2017. The Landlord was agreeable to this date providing the Tenants paid the Landlord the: rental arrears which the parties confirmed were unpaid at the time of this hearing; monetary compensation awarded at the June 15, 2016 hearing; and filing fees incurred by the Landlord for the enforcement of Possession so far. The Tenants considered the Landlord's proposal and agreed that this was the best way to move forward.

As a result, I crafted another settlement agreement which now replaces the June 15, 2016 Decision and Monetary Order as follows.

Settlement Agreement

Section 63 of the Act, allows an Arbitrator to 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. Both parties agreed to settlement of this dispute as follows:

1. The Tenants agreed to pay the Landlord a total of **\$3,085.00** for: unpaid rent; the monetary compensation previously awarded in the June 15, 2016 Decision; and the filing fees paid by the Landlord for the enforcement of the Order of Possession incurred at the time of this hearing.
2. The Tenants agreed to make this payment to the Landlord **on or before January 15, 2017**.
3. The Tenants **must** make these monies available to the Landlord in the form of a bank draft or money order and are prohibited from providing the Landlord with a cheque.
4. The Tenants are responsible for making the money order/bank draft available to the Landlord by January 15, 2017 and must retain sufficient evidence of this. The Tenants agreed to register mail the monies to the Landlord to avoid any confusion that a personal meeting or exchange may have. However, the Tenants must allow for sufficient time for mail delivery for the monies to get to the

Landlord by January 15, 2017 and may track their payment on the Canada Post website to support their effort to meet the terms and conditions agreed to.

5. It is not the responsibility of the Landlord to obtain these monies and the Tenants are responsible for retaining evidence of payment made to meet the terms and conditions of this agreement.
6. If the Landlord receives the monies by January 15, 2017, the Tenants will be required to vacate the rental unit by **January 31, 2017**. If they fail to do so, the Landlord may use the June 15, 2016 Order of Possession which he currently has to continue with the enforcement process.
7. If the Landlord does not receive the monies on or before January 15, 2017, the Landlord may proceed with the enforcement of the June 15, 2016 Order of Possession at any point from January 16, 2017 onwards.
8. The Tenants confirmed during the hearing the correct address of the Landlord including the correct postal code which was amended on the Tenant's Application and appears on the front page of this Decision.

To give rise and effect to the above agreement, the Landlord is issued with a Monetary Order in the amount of \$3,085.00 to be enforced in the Small Claims Division of the Provincial Court. This Monetary Order replaces that issued to the Landlord on June 15, 2016.

The Order of Possession issued to the Landlord on June 15, 2016 still remains in full force and effect and is **conditional** upon the above agreement. The parties confirmed their understanding and agreement of resolution in this manner both during and at the conclusion of the hearing. 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: January 06, 2017

Residential Tenancy Branch