



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE GLENAYRE REALTY CHILLIWACK LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDC, FF

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that the landlord was served with the notice of hearing package and the two submitted documentary evidence packages via Canada Post Registered Mail on September 23, 2016 and on November 14, 2016. The landlord's agent (the landlord) confirmed receipt of these packages as claimed by the tenant. The landlord states that the tenant was served with the landlord's submitted documentary evidence package via Canada Post Registered Mail on November 9, 2016. The tenant has confirmed receipt of the landlord's documentary evidence as claimed. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party, I am satisfied that both parties have been properly served and that both parties are deemed served as per section 90 of the Act.

The tenant filed 4 amendments to his application for dispute and states that each amendment was served to the landlord via Canada Post Registered Mail. The landlord confirmed receipt of each of the tenant's amendments in this manner and has acknowledged his understanding of each amendment. As both parties have confirmed their understanding of the filed amendment and that both parties are prepared to proceed, I find that both parties have been sufficiently served as per section 90 of the Act and are deemed served.

The hearing commenced as scheduled but was unable to be completed on this date. As both parties have filed extensive supporting documentation, an adjournment is required for more time to complete the hearing. The continuation date of this hearing will be mailed along with this Interim Decision. The hearing is adjourned. Both parties were cautioned that no further evidence would be accepted and that neither party may submit any further evidence.

The hearing was reconvened January 18, 2017 via conference call where both parties attended.

The landlord filed an application dated December 14, 2016 which was cross-referenced with the tenant's application. In it the landlord seeks:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant filed an amendment dated December 22, 2016 seeking an additional \$2,799.07 monetary claim and return of the security and pet damage deposits.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice?

Is the tenant entitled to a monetary order for money owed or compensation for damage of loss and recovery of the filing fee?

Is the landlord entitled to a monetary order for unpaid rent, for damage, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on August 1, 2015 on a fixed term tenancy until January 31, 2016 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated July 4, 2015. The monthly rent was \$1,100.00 payable on the 1st day of each month. A security deposit of \$500.00 and a pet damage deposit of \$500.00 were paid.

Both parties confirmed that the landlord served the tenant with a 10 Day Notice dated September 21, 2016 which was posted to the rental unit door on September 21, 2016. The landlord confirmed in his direct testimony that he was cancelling this 10 Day Notice dated September 21, 2016 as there was an error on the notice.

Both parties confirmed that the landlord served the tenant with a 10 Day Notice dated October 6, 2016 which was posted to the rental unit door on October 6, 2016. The landlord confirmed in his direct testimony that he was cancelling this 10 Day Notice dated September 21, 2016 as there was an error on the notice.

Both parties confirmed that the landlord served the tenant with a 1 Month Notice issued for Cause dated October 24, 2016 which was posted to the rental unit door on October 24, 2016. The landlord confirmed in his direct testimony that he was cancelling this 1 Month Notice dated October 24, 2016.

Both parties confirmed that the landlord served the tenant with a 10 Day Notice dated November 3, 2016. The landlord clarified that he has posted the 10 Day Notice to the rental unit door on November 3, 2016 and that the 10 Day Notice was also served to the tenant via Canada Post Registered Mail. The tenant disputes receiving the 10 Day Notice dated November 3, 2016 posted to his rental unit door, but does confirm that the 10 Day Notice was received via Canada Post Registered Mail on November 10, 2016. The landlord has submitted a copy of a proof of service document which shows that the 10 Day Notice dated November 3, 2016 was posted to the rental unit door on November 3, 2016 with a witness. The tenant disputes this stating that the witness is the landlord's brother, B.B. I find that the service of the 10 Day Notice dated November 3, 2016 is disputed and that the proof of service document of the landlord is questionable as the witness is the brother of the landlord. However, both parties have confirmed that the 10 Day Notice was sent via Canada Post Registered Mail by the landlord and received by the tenant on November 10, 2016. I find based upon the undisputed evidence of both parties that the tenant has been sufficiently served as per section 90 of the Act.

The tenant seeks a monetary claim of \$3,616.59 consisting of utility charges for 1 year. The landlord seeks a monetary claim of \$1,000.00 for unpaid rent for October and November of 2016.

During the hearing both parties agreed that the tenant had vacated the rental unit on December 1, 2016 and no longer seeks to cancel the 10 Day Notice dated November 3, 2016. The landlord stated that he now has possession of the rental unit and has no issues regarding possession.

Analysis

Section 63 of the *Residential Tenancy Act* provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a resolution. Specifically, it was agreed as follows;

1. The tenant agreed to cancel his application for dispute.
2. The landlord agreed to cancel his application for dispute.
3. Both parties agree that the landlord will pay to the tenant \$500.00, immediately.
4. Both parties agreed that the landlord will retain the \$500.00 security deposit and the \$500.00 pet damage deposit.

Pursuant to this agreement the landlord will be given monetary order to reflect condition #3 of this agreement. Should it be necessary, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The above particulars comprise full and final settlement of all aspects of the dispute arising from these applications for both parties. 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 12, 2017

Residential Tenancy Branch