



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNDC, FF; CNL, MNDC, RP, PSF, LRE, AS, FF

Introduction

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

- an order of possession for landlord's use of property, pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated November 22, 2016 ("2 Month Notice"), pursuant to section 49;
- a monetary order for money owed or compensation for damage or loss under the Act, *Regulation* or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to make repairs to the rental unit, pursuant to section 33;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit, pursuant to section 70;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld, pursuant to section 65; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and his agent and the tenant and her lawyer 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. The tenant confirmed that her lawyer had authority to speak on her behalf at this hearing. This hearing lasted approximately 112 minutes in order to allow both parties to fully negotiate a settlement of this claim and due to additional time required by the tenant to speak with her lawyer and clarify questions regarding the settlement process.

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.

The tenant confirmed receipt of the landlord's 2 Month Notice. The notice states an effective move-out date of January 31, 2017. The reason on the notice is that "*the landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.*" In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice.

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. Both parties agreed that this tenancy will end by 1:00 p.m. on May 31, 2017, by which time the tenant and any other occupants will have vacated the rental unit;
2. Both parties agreed that this tenancy is ending pursuant to the landlord's 2 Month Notice, dated November 22, 2016;
3. Both parties agreed that the tenant is entitled to one month's free rent compensation, pursuant to section 51 of the *Act* and the landlord's 2 Month Notice, on the following term:
 - a. The tenant will not be required to pay any rent of \$1,148.00 to the landlord for the period from May 1 to 31, 2017;
4. The landlord agreed that the tenant is not required to pay any rent for January 2017 and February 2017 for this tenancy;
 - a. Both parties confirmed during the hearing that the landlord had already returned the tenant's rent cheques for January 2017 and February 2017 to the tenant;
5. The landlord agreed to provide the tenant with the written building permits for the rental property by February 28, 2017;
6. The landlord agreed, at his own cost, to have certified, licensed technicians inspect and repair the following, if repair is recommended by the technicians, at the rental unit by March 31, 2017;
 - a. The backroom dangling light fixture;
 - b. The backroom floor, ceiling and door frame;
 - c. The hole in the wall of the main hallway;
 - d. The carport roof that is collapsing;
 - e. The black mould in the chimney grout;
7. The landlord agreed to abide by section 28 of the *Act* regarding the tenant's right to quiet enjoyment;

8. The landlord agreed to abide by section 29 of the *Act* regarding providing notice to the tenant before entering the rental unit;
9. The landlord agreed to provide the tenant with written notice, at least 24 hours prior, if repairs are to occur at the rental unit and/or interruptions to heat, water and/or electrical services at the rental unit;
10. The landlord and his agent agreed that the landlord's agent will not enter the tenant's rental unit or deal with any tenancy matters relating to the tenant for the remainder of this tenancy;
11. The landlord agreed that only the landlord, his daughter and any certified, licensed repair personnel will enter the rental unit on behalf of the landlord for the remainder of this tenancy;
12. The landlord agreed that his daughter will be the contact person on behalf of the landlord for any tenancy-related matters;
13. Both parties agreed to bear the cost of the \$100.00 filing fees paid for each of their applications;
14. 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 affirmed at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute.

The tenant was provided with additional time during the hearing in order to speak with her lawyer, confirm instructions and make a decision regarding settlement. I explained the settlement process and the consequences of settlement to the tenant a number of times during the hearing and answered any questions she had. I also notified the tenant that she should not settle if she felt pressured or unsure about the settlement. The tenant affirmed, under oath, a number of times during the hearing that she wanted to settle of her own free will, without any pressure or duress from anyone, that she was confident of her settlement decision, and that she fully understood the consequences of settlement.

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 May 31, 2017. 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 May 31, 2017. 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.

Each party must bear the cost of the \$100.00 filing fees paid for their applications.

I order the landlord to provide the tenant with the written building permits for the rental property by February 28, 2017.

I order the landlord to have certified, licensed repair technicians complete the above inspections and recommended repairs, by March 31, 2017.

I order the landlord to abide by sections 28 and 29 of the *Act* for the remainder of this tenancy.

I order the landlord to provide the tenant with written notice, at least 24 hours prior, if repairs are to occur at the rental unit and/or interruptions to heat, water and/or electrical services at the rental unit.

I order the landlord's agent not to enter the tenant's rental unit or deal with any tenancy matters relating to the tenant for the remainder of this tenancy.

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 14, 2017

Residential Tenancy Branch