



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF; CNR, ERP, RR, FF

Introduction

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

- an early end to tenancy and an order of possession, pursuant to section 56; and
- authorization to recover the filing fee for their application, pursuant to section 72.

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

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, served on February 8, 2017 ("10 Day Notice"), pursuant to section 46;
- an order requiring 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 his application, pursuant to section 72.

The landlords' agent, BS ("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 had authority to speak on behalf of the two landlords named in this application, who are his parents, as an agent at this hearing (collectively "landlords"). This hearing lasted approximately 35 minutes in order to allow both parties to negotiate a full settlement of both applications.

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.

During the hearing, both parties confirmed that there is a "future hearing" scheduled for the tenant's application on March 16, 2017 at 9:30 a.m. The landlord confirmed that he received the tenant's application for that matter. Both parties agreed to settle the

tenant's application at this hearing and confirmed that they would not attend the future hearing because it is cancelled by way of this agreement.

Settlement Terms

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 and 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 April 14, 2017, by which time the tenant and any other occupants will have vacated the rental unit;
2. The landlords agreed that their 10 Day Notice served to the tenant on February 8, 2017, was cancelled and of no force or effect;
3. The tenant agreed that no emergency repairs were required at the rental unit and he was not seeking a rent reduction monetary order against the landlords;
4. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the tenant's application scheduled for a future hearing at 9:30 a.m. on March 16, 2017, arising out of this tenancy, the file number of which appears on the front page of this decision;
 - a. Both parties confirmed that they would not be attending the future hearing which is hereby cancelled by way of this settlement;
5. Both parties agreed to bear the cost of the \$100.00 filing fees paid for their applications;
6. 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 and binding and enforceable, which settle all aspects of this dispute.

Analysis – Substituted Service

Subsection 71(1) of the *Act* permits me to make an order for substituted service.

Residential Tenancy Policy Guideline 12 sets out the criteria for granting this order:

An application for substituted service may be made at the time of filing the application or at a time after filing. The party applying for substituted service must be able to demonstrate two things:

- that the party to be served cannot be served by any of the methods permitted under the Legislation, and*
- that there is a reasonable expectation that the party being served will receive the documents in that way.*

During the hearing, both parties agreed to serve each other with any tenancy-related documents and Residential Tenancy Branch (“RTB”) documents by way of email. Both parties confirmed that they had difficulty serving each other for these two applications at this hearing. The tenant claimed that his only Canadian service address is to a hotel which cannot accept documents on his behalf and he has no family or friends who can accept service on his behalf at a different Canadian address. The landlord said that he tried to serve the tenant at the hotel address and the documents could not be delivered to him. The tenant stated that his service address is in the USA and when he served documents to the landlords, he was unable to use Canada Post, so the landlords claimed that his evidence was inadmissible on that basis. He said that the cost of mailing documents to or from the USA was higher than mailing within Canada using Canada Post. The landlord agreed that sending emails between the parties would be easier and more efficient, given the service problems in the past.

I find that both parties cannot be properly served by any of the methods permitted under the *Act* and that there is a reasonable expectation that both parties will receive any documents by way of email, as confirmed during this hearing.

Both parties provided their email addresses to each other during the hearing and they are listed on the front page of this decision. The landlord confirmed that he was the correct person to contact on behalf of the landlords and that he had authority to represent them; he provided his personal email to the tenant, stating that any correspondence addressed to the landlords should be sent to him directly.

Both parties were advised to check their email accounts frequently and on a regular basis and be prepared to demonstrate at any future hearings that documents were sent in accordance with this order by providing a print out of the sent emails. Any documents sent by email will be deemed received by the other party on the third day after the email is sent.

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 landlords **only** if the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on April 14, 2017. The landlords are provided with this Order in the above terms and 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 April 14, 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.

The tenant's application, scheduled for a future hearing on March 16, 2017 at 9:30 a.m., is settled by way of this agreement and neither party is required to attend the future hearing.

Both parties must bear the cost of the filing fees paid for these applications.

The landlords' 10 Day Notice served on February 8, 2017, is cancelled and of no force or effect.

The tenant's application for emergency repairs and a rent reduction is dismissed without leave to reapply.

I order that both parties send any tenancy-related and RTB-related correspondence to the other party's email address on the front page of this decision.

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: March 13, 2017

Residential Tenancy Branch