



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, CNL, OLC, FF (Tenants' Application)
OPC, MNSD, FF (Landlord's Application)

Introduction

This hearing was convened by way of conference call in response to determine an application made by the Landlord on February 16, 2017 and an application made by the Tenants on February 10, 2017.

The Tenants applied to: cancel the notice to end tenancy for cause and the Landlord's use of the rental property; for the Landlord to comply with the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and, to recover the filing fee.

The Landlord applied for an Order of Possession for a notice to end tenancy for cause, to keep the Tenant's security deposit, and to recover the filing fee.

The Landlord, the Landlord's daughter who acted as the Landlord's agent, and one of the Tenants appeared for the hearing and provided affirmed testimony. The parties confirmed receipt of each other's application and documentary evidence served prior to the hearing.

At the start of the hearing, the Tenant confirmed that he was not disputing the 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") but he was disputing the 1 Month Notice to End Tenancy for Cause (the "1 Month Notice"). This was because he claimed that it was served to the Tenants by the Landlord as a way of avoiding the payment of compensation payable under the 2 Month Notice. The Tenant confirmed that they were going to vacate the rental unit pursuant to the vacancy date on the 2 Month Notice of March 31, 2017 which was the same vacancy date that is detailed on the 1 Month Notice.

The Landlord's daughter refuted this stating that they were not refusing to give the Tenants compensation and were happy to pay this but that the Tenants had informed them that they were going to dispute the 2 Month Notice and continue to pay rent. 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.

Based on the submissions made by the parties during the hearing, I offered the parties an opportunity to settle this matter mutually with agreeable conditions. The parties confirmed their voluntary agreement to pursue resolution by mutual agreement based on the following terms which were agreed to by the parties.

Settlement Agreement

The parties agreed that the tenancy will end pursuant to the 2 Month Notice vacancy date of **March 31, 2016 at 1:00 p.m.** The Tenants are to provide the Landlord with vacant possession of the rental unit on or before this date.

The Landlord is issued with an Order of Possession effective for this date and time. This order may be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenants fail to voluntarily vacate the rental unit. Copies of the order are attached to the Landlord's copy of this Decision.

Accordingly, the parties withdrew the 1 Month Notice and the Tenant withdrew his Application to cancel it, as this is now a moot issue.

The Landlord is to provide the Tenant with compensation payable under the 2 Month Notice of one month's free rent. The parties confirmed that the Tenants had already paid March 2017 rent. Therefore, the Landlord is required to reimburse this compensation to the Tenants on or before March 31, 2017. If the Landlord fails to do so, the Tenants are at liberty to apply for a Monetary Order for this amount.

The Landlord's Application to keep the Tenant's security deposit is premature. The Tenant must comply with the Act in returning the rental unit to the Landlord clean and undamaged. If the Tenant does not, the Landlord is a liberty to re-apply to keep the Tenant's security deposit and/or apply for alleged damage to the rental unit or for other losses.

However, both parties were provided with extensive information about their rights and obligations in dealing with the security deposit at the end of the tenancy and were informed that the provisions of the Act with respect to the return of the Tenants' security deposit are still in effect and apply.

As the parties disputed the basis on which the applications were filed but decided to reach settlement mutually with each other, I declined to award any of the filing fees paid.

The parties confirmed during the hearing and at the end of the hearing that they had entered into this settlement agreement voluntarily and understood the full nature of the agreement and its meaning.

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: March 14, 2017

Residential Tenancy Branch