



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR O

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 ("10 Day Notice") issued on March 2, 2017 pursuant to section 46 as well as any other remedy that is appropriate under the Act.

As a result of a Residential Tenancy Branch Hearing on March 30, 2017, the landlord was granted an Order of Possession for Unpaid Rent and a monetary order for unpaid rent. At that hearing, the landlord attended and provided proof that he had sufficiently served the tenant with his dispute resolution application. The tenant did not attend on March 30, 2017. The tenant testified at this hearing that he was confused about the hearing dates.

Before the conclusion of this hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Preliminary Matter

The doctrine of *res judicata* prevents the retrying of a matter. The previous hearing was adjudicated with one party present. I am not able to change or revisit that decision. However, in this particular case, the parties achieved a resolution of their tenancy dispute by mediation and requested only that their settlement agreement be documented and enforced. Therefore, I have documented below the agreement made between the parties and provided a new Order of Possession, issued with the agreement of both parties, to be used only in the event the tenant fails to meet his obligations. The parties did not agree on the issuance of a provisional monetary order in the event that the tenant does not pay the remaining amount due to the landlord.

Background and Evidence

The tenant and landlord agreed that the tenant has paid a majority of the outstanding rent and that he will pay the balance (\$2200.00) outstanding by May 2, 2017 or he will vacate the rental unit.

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. Given the agreement reached between the parties during the proceedings, I find that the parties have settled their dispute and the following records this settlement as a decision:

The Parties mutually agreed as follows:

1. The landlord agreed to not enforce the Order of Possession issued on April 3, 2017 to the landlord.
2. The tenant agreed to pay the landlord \$2200.00 by May 2, 2017.
3. In the event that the tenant abides by the monetary terms of this agreement as outlined in Condition 2, the landlord agreed to cancel the 10 Day Notice to End Tenancy for Unpaid Rent.
4. The tenant agreed to vacate the rental unit on or before May 5, 2017 if the rental amount identified in Condition 2 has not been paid by May 2, 2017. These terms comprise the full and final settlement of all aspects of this dispute for both parties.

The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis. The landlord and tenant both confirmed that they understood the nature of this full and final settlement of this matter.

As stated in my previous decision and provided here for reference, section 26(1) of the *Act* sets out the rules about payment of rent,

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

Conclusion

In the event that the tenant abides by the terms of Condition 2 of the above-noted settlement agreement, I find that the 10 Day Notice is cancelled and of no continuing force or effect.

To give effect to the settlement reached between the parties, I grant an Order of Possession to the landlord to take effect by 5:00 pm on May 2, 2017, to be used only in the event that the tenant fails to abide by the monetary terms of this settlement as outlined in Condition 2 of the settlement agreement reached between the parties. 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.

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: April 21, 2017

Residential Tenancy Branch