



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes OPR; OPB, O, FF

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55.

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

- an order of possession for breach of a mutual agreement to end tenancy, pursuant to section 55;
- other unspecified remedies; and
- authorization to recover the filing fee for that application, pursuant to section 72.

The landlord's agent, JS ("landlord") and the two tenants, "tenant DC" and "tenant CD" (collectively "tenants") 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 was the manager of the rental building and he had authority to speak on behalf of the landlord company named in this application, as an agent at this hearing (collectively "landlord").

This hearing lasted approximately 67 minutes in order to allow both parties to negotiate a full settlement of both applications and due to repeated questions from both parties. Tenant DC exited the conference briefly because she said that her phone battery died, but she returned to the conference within a few minutes.

Preliminary Issue – Previous Hearings and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. The landlord filed a direct request application to obtain an order of possession for unpaid rent against both tenants. A "direct request decision," dated February 28, 2017, was issued by an Adjudicator for the direct request proceeding. The direct request decision granted an order of possession against tenant DC only.

The tenants applied for a review of the direct request decision and a new review hearing (this current hearing on April 20, 2017) was granted by a different Arbitrator, pursuant to a “review consideration decision,” dated March 17, 2017.

By way of the review consideration decision, the tenants were required to serve the landlord with a copy of the review consideration decision, the notice of review hearing and the additional written evidence that they submitted with their review application.

The landlord confirmed receipt of the review consideration decision, the notice of review hearing and the additional written evidence from the tenants. The tenants confirmed receipt of the landlord’s direct request application package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the review consideration decision, notice of review hearing and additional written evidence and the tenants were duly served with the landlord’s direct request application package.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord’s application to include the full legal first name of tenant DC, as she raised no objection to this amendment and there is no prejudice to either party in making the amendment.

During the hearing, both parties confirmed that there is a “future hearing” scheduled for the landlord’s application on April 21, 2017 at 9:00 a.m. (referred to as the landlord’s “second application” above). The tenants confirmed that they received the landlord’s second application. Both parties agreed to settle the landlord’s second 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 11:00 a.m. on April 30, 2017, by which time the tenants and any other occupants will have vacated the rental unit;
2. The landlord agreed to not pursue the tenants for any unpaid rent for the period from January 1, 2017 to April 30, 2017, for this rental unit and this tenancy;

3. The landlord agreed that the landlord's two 10 Day Notices to End tenancy for Unpaid Rent or Utilities, dated January 10, 2017 and February 3, 2017 ("two 10 Day Notices"), are cancelled and of no force or effect;
4. Both parties agreed that the parties' Mutual Agreement to End Tenancy, dated January 20, 2017, is cancelled and of no force or effect;
5. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the landlord's second application scheduled for a future hearing at 9:00 a.m. on April 21, 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;
 - b. The landlord agreed to bear the cost of the \$100.00 filing fee paid for that application;
6. The landlord agreed that this settlement agreement also constitutes a final and binding resolution of the landlord's first direct request application.

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 landlord confirmed that he understood and agreed that this settlement agreement is binding upon the landlord company named in this application and that he had authority as its agent to make this agreement on its behalf.

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(s) and any other occupants fail to vacate the rental premises by 11:00 a.m. on April 30, 2017. The tenant(s) must be served with this Order in the event that the tenant(s) and any other occupants fail to vacate the rental premises by 11:00 a.m. on April 30, 2017. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord's second application, scheduled for a future hearing on April 21, 2017 at 9:00 a.m., is settled by way of this agreement and neither party is required to attend the future hearing. The landlord must bear the cost of the \$100.00 filing fee paid for that second application.

The landlord's two 10 Day Notices, dated January 10, 2017 and February 3, 2017, are cancelled and of no force or effect.

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 20, 2017

Residential Tenancy Branch