



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

In February 2017, the Landlords named in this dispute, issued all tenants of the rental home with a notice to end tenancy. The rental home is a large house located on a street corner. As such it has two residential addresses, which are detailed on the front page of this Decision, both of which relate to the same property. The rental home contains several units that are rented under separate tenancies.

In March 2017, six tenants filed an application to dispute the notice to end tenancy. Three of these tenants applied to have their applications joined and heard together in one hearing. However, in the interim time period those three tenants withdrew and cancelled their applications. The remaining three Tenants, listed on the first page of this Decision who are referred to by their first and last initials herein, proceeded with their applications which were before me as follows.

Dispute Codes

LO's application (Room 7): CNL, OLC
JJ's application (Basement Room): CNL, OLC, FF
SO's application (Unit 2): CNL, OLC, FF, O

Preliminary Issues

The hearings that took place to determine the three applications before me were heard by way of telephone conference call. The Tenants applied to dispute the Two Month Notice to End Tenancy for the Landlords' Use of Property (the "Two Month Notice") dated February 27, 2017, and for the Landlords to comply with the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement. JJ and SO also applied to recover the application filing fee paid to initiate this dispute resolution hearing.

The Landlords and the Landlords' legal counsel appeared for the hearing that took place on April 13, 2017. LO and JJ also appeared for that hearing. However, SO was unable to appear because she was on vacation and was instead represented by her legal counsel. During that hearing, the male Landlord, JJ, and LO provided affirmed testimony.

At the start of that hearing, I asked the Tenants and SO's legal counsel if they had any objections to having all three applications heard together in this hearing or whether they should be heard separately. No objections were raised and consent was provided to proceed. Legal counsel for the Landlords also raised no objections to hearing all of the three applications jointly.

Legal counsel for the Landlords confirmed service of all three applications by registered mail and service of: LO's eight pages of evidence; JJ's six pages of evidence; and SO's nine pages of evidence. The Tenants and SO's legal counsel each confirmed service of the Landlords' 100 pages of documentary evidence and 16 pages of written submissions.

I noted that in LO's file there were 64 pages of evidence and one receipt that had been submitted under a different file number relating to one of the three applicants that had since withdrawn their application. LO stated that she had asked that applicant to have this evidence transferred to her file for this hearing. However, LO confirmed she was not intending to rely on that evidence for this hearing. In addition, legal counsel for SO confirmed she had not been made aware of this evidence by any of the tenants in this dispute. Therefore, I did not consider this evidence in the proceedings. Accordingly, I was satisfied that the parties had exchanged all documentary evidence prior to the April 13, 2017 hearing pursuant to the Residential Tenancy Branch Rules of Procedure (the "Rules").

In the April 13, 2017 hearing, I heard the evidence of the Landlords. However, the time limit set for the hearing did not allow sufficient time to hear the Tenants' rebuttal evidence and hear from the Landlords' witness. As a result, that hearing was adjourned. The parties were issued with an Interim Decision by email dated the same date and this should be read in conjunction with this Decision.

The reconvened hearing, which took place on May 18, 2017 was attended by the male Landlord and his legal counsel who was a different lawyer to the one representing the Landlords for the April 13, 2017 hearing.

The hearing was attended by legal counsel for SO, who was also a different lawyer to the one representing SO at the April 13, 2017 hearing. SO's legal counsel informed me that his appearance at this hearing was to put forward a request for adjournment because SO's lawyer who represented SO at the first hearing was unable to appear and had been unsuccessful in obtaining prior consent from the Landlords' legal counsel for an adjournment of the proceedings.

There was no appearance by LO and JJ for this hearing during the 100 minute hearing. The Landlords' legal counsel explained that the Landlords had been able to reach a settlement agreement with LO and JJ outside of the dispute resolution process but were still seeking an Order of Possession to end their tenancies for June 1, 2017 through my decision. Accordingly I make the following findings on the applications made by LO and JJ.

Preliminary Findings

Rule 7.3 of the Rules state that if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the LO and JJ failed to appear for the hearing and present the merits and reasons to dispute the Two Month Notice, and the Landlord appeared and was ready to proceed, I dismissed their applications without leave to reapply.

Section 55(1) of the Act provides that if a tenant makes an application to dispute a landlord's notice to end a tenancy, the director must grant an order of possession to the landlord if the notice to end tenancy complies with Section 52 of the Act.

I have examined the Two Month Notice provided by the parties into evidence and I find the Landlords used the approved form, and the contents within comply with Section 52 of the Act.

As I have now dismissed LO and JJ's applications, I must now grant the Landlords an Order of Possession pursuant to Section 55(1) of the Act which is effective at 1:00 p.m. on June 1, 2017. Copies of these orders in the name of each Tenant are attached to the Landlords' copy of this Decision. This order may be filed and enforced in the BC Supreme Court as an order of that court if the Tenants fail to vacate the rental unit. The Tenants may also be held liable for any enforcement costs incurred by the Landlords to obtain vacant possession of the rental unit.

In relation to SO's application, her legal counsel requested an adjournment of the proceeding. As a result, I allowed both parties to provide me with submissions on their agreement or refusal to consent to an adjournment of the reconvened hearing. During that discussion, it became apparent to me that the Landlords' lawyer appearing for this hearing had discussed the issue of settlement with SO's lawyer appearing for the April 13, 2017 hearing prior to this reconvened hearing. However, those discussions were not successful.

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.

As the parties had already entered into settlement discussions outside of the dispute resolution process, which I had encouraged the parties to do in my Interim Decision, I asked SO's legal counsel whether he had authority from SO and SO's initial lawyer to negotiate and settle the matter with the Landlord in this hearing. SO's lawyer confirmed that he did have this authority and was willing to work with the Landlords as he was made aware that the parties had come close to making an agreement and were not far apart.

As a result, I offered the parties to continue negotiations by mutual agreement before I proceeded to make any legal findings in this matter on SO's application. The parties were informed that this process was purely voluntary and there was no pressure on the parties to negotiate or to agree to any settlement.

Both parties considered this alternative form of resolution, turned their minds to compromise and were then able to reach mutual agreement to settle all the issues in this dispute in full and final satisfaction. Accordingly, I assisted the parties to craft the following settlement agreement which relates only to SO's tenancy.

Settlement Agreement

1. The parties agreed to withdraw the Two Month Notice and in the alternative to end the tenancy at **1:00 p.m. on June 1, 2017.**
2. The application made by SO is withdrawn.
3. The Landlord agreed that SO will be compensated for a total amount of **\$3,870.00** which comprises of \$3,250.00 in compensation and \$620.00 for two months' rent rebate for ending the tenancy **in full and final satisfaction** of all the issues associated with this tenancy. The Landlords agreed to pay this amount to SO, via her legal counsel, on or before May 29, 2017 for disbursement of the funds.
4. SO is issued with a Monetary Order for this amount which is enforceable in the Small Claims Division of the Provincial Court as an order of that court.
5. The Landlords are given consent to keep SO's security deposit of \$212.50 in exchange for the compensation payable to SO above. In exchange the Landlords relinquish their right to make any claim against the Tenant for cleaning and damage to the rental unit after the tenancy ends.

6. SO understands that the terms and conditions of this settlement agreement were made confidentially within the confines of this hearing and this agreement. Therefore, SO agrees not to share or disclose this agreement either in writing or verbally to any other party other than her lawyers so as not to compromise this agreement.

The parties confirmed the above terms and conditions entered into both during and at the conclusion of the hearing and confirmed that it was made voluntarily. The parties also confirmed their understanding that this agreement is made in full and final satisfaction of all the issues associated with this tenancy. Therefore, no further Applications are permitted. These files are now closed.

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: May 18, 2017

Residential Tenancy Branch