



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, OLC, ERP, RP, PSF, LRE, LAT, RR, FF, MNDC

Introduction

This hearing was convened by way of conference call in response to the Tenants' Application for Dispute Resolution (the "Application") filed on May 5, 2017 for the following issues:

- To cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice") dated April 23, 2017.
- For the Landlord to comply with the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement;
- For the Landlord to make repairs and emergency repairs to the rental unit;
- For the Landlord to provide services or facilities required by law;
- To suspend or set conditions on the Landlord's right to enter the rental unit;
- To authorise the Tenant to change locks to the rental unit;
- To allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided; and
- To recover the filing fee from the Landlord.

The Tenants then amended their Application on May 29, 2017 to include a request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement ,and a request to only deal with the 2 Month Notice in this hearing.

The Tenants, the Tenants' legal counsel, the Landlord, and the Landlord's wife appeared for the hearing. Only the female Tenant and Landlord provided affirmed testimony. The hearing process was explained to the parties and they had no questions about how the proceedings would be conducted.

The Landlord confirmed receipt of the Tenants' Application on May 6, 2017 through his mail slot and the Tenant's documentary evidence served prior to the hearing. The Tenant stated that she served the Landlord with their amended Application on May 29,

2017 through the Landlord's mail slot. The Landlord confirmed that he received the Amended Application on June 1, 2017 but objected to the amendment because it had not been served to him pursuant to the 14 day time limit provided for by Rule 4 of the Residential Tenancy Branch Rules of Procedure (the "Rules"). Legal counsel submitted that the amendment sought only to deal with the 2 Month Notice and that there was no prejudice to the Landlord.

Rule 2.3 of the Rules sets out that in the course of the dispute resolution proceeding, Arbitrators may use their discretion to dismiss unrelated claims contained in a single Application with or without leave to re-apply. In this case, I determined that the 2 Month Notice served to the Tenants was for owner occupancy and that the Tenants' remaining issues were not related to this material issue of the reason for ending the tenancy on the 2 Month Notice. Therefore, I informed the parties that the only matter I would deal with in this hearing was the 2 Month Notice. No objections were raised by the parties.

At the start of the hearing, legal counsel for the Tenants indicated that due to the problems in this tenancy and the strained relationship between the parties, the Tenants were willing to end the tenancy mutually.

Section 63 of the Act states that an 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.

Accordingly, I allowed the parties to have a discussion about ending the tenancy mutually rather than have a decision forced upon them made on the evidence before me. The Landlord was also cautioned that he had the burden to prove the 2 Month Notice. The parties then discussed the issues between them, turned their minds to compromise, and were able to reach agreement as follows.

Settlement Agreement

1. The parties agreed to end this tenancy mutually on August 31, 2017. Therefore, the vacancy date on the 2 Month Notice is extended to August 31, 2017. However, the Tenants may vacate earlier than this date provided they give written notice to the Landlord of the earlier departure date. This written notice does not require a time limit that would be otherwise required by the Act because the purpose is to inform the Landlord of the end date rather than to provide the Landlord with sufficient legal notice.
2. The Landlord is granted an Order of Possession effective August 31, 2017 at 1:00 p.m. 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 vacate the rental unit by this agreed date and time.

3. The Tenants are still liable to pay rent for the duration of the tenancy and are still eligible to one month's compensation of rent under the 2 Month Notice. This may be achieved by the Tenants through withholding rent for the last month of the tenancy or returning that amount to the Tenants if they vacate earlier.
4. The Tenant withdrew this Application.
5. The Landlord also withdrew and cancelled his application which he had failed to end the tenancy early. That application was scheduled to heard on June 21, 2017 at 9:00 a.m., the file number for which appears on the front page of this Decision. That file is now cancelled and there is no requirement for the parties to appear for that hearing.
6. The Landlord is still at liberty to use remedies under the Act to end the tenancy earlier than August 31, 2017, such as a notice to end tenancy for unpaid rent, or for issues occurring after this hearing.
7. The parties committed to working together with minimal contact to allow the tenancy to reach a successful conclusion.

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 this binding agreement and its meaning. This file, and the file to be heard on June 21, 2017 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: June 14, 2017

Residential Tenancy Branch