



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FRASER MARINE DRIVE HOLDINGS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, OPB, FF

Introduction

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

- an Order of Possession for cause and/or for breach of a material term of their tenancy agreement pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord entered undisputed written evidence and sworn testimony that the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) was issued to the tenant on June 23, 2017 in two ways. To support the landlord's claim that the 1 Month Notice was placed in the tenant's mail slot that day, the landlord entered into written evidence a witnessed and signed Proof of Service document. The landlord also said that a second copy of the 1 Month Notice was sent to the tenant by registered mail on June 23, 2017. The landlord provided a copy of the Canada Post Tracking Number as well as the returned copy of the envelope for this registered mailing to confirm this registered mailing. For his part, the tenant testified that he seldom checks his mail, and that he only received and opened the copy of the 1 Month Notice placed in his mail slot on or about July 27, 2017. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 1 Month Notice on June 26, 2017, the third day after that Notice was placed in the tenant's mail slot. I also note that the second copy of the 1 Month Notice was deemed served on June 28, 2017, the fifth day after its registered mailing.

The tenant confirmed receipt of the landlord's dispute resolution hearing package and written evidence package. The landlord gave undisputed sworn testimony and written evidence that these packages were sent by registered mail on August 1, 2017, and were also left in the tenant's mail slot that day. The landlord entered written evidence to confirm the registered mailing in the form of a copy of the Canada Post Tracking Number. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the dispute resolution hearing and written evidence packages on August 6, 2017, well in advance of this hearing.

Both parties confirmed receipt of an Amended Notice of Hearing from the Residential Tenancy Branch (the Branch), which changed the date of this hearing from October 16, 2017 to November 10, 2017, due to technical problems that emerged with the original teleconference.

Although the tenant sent the Branch copies of his written evidence package, he did not serve this evidence to the landlord. He said that he was unaware that he was required to do so, even though this information is clearly stated on the Notice of Hearing provided to the parties. Since the tenant did not serve the landlord with his written evidence, I advised the parties that I could not consider the tenant's written evidence.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause and/or for breach of a material term of their tenancy agreement? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began by way of a three month fixed term tenancy agreement on March 24, 2000. Upon the expiration of the original term, the tenancy has continued on a month-to-month basis. The original monthly rent of \$475.00 has increased to the current monthly rent of \$670.69, payable in advance on the first of each month. The landlord continues to hold the tenant's \$237.50 security deposit paid on March 24, 2000.

The landlord entered into written evidence a copy of the 1 Month Notice of June 23, 2017. In that Notice, the landlord cited the following reasons for the issuance of the Notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant confirmed that he has not applied to cancel the landlord's 1 Month Notice. He said that by the time he received that Notice, he realized that he was well past the date for applying to cancel the 1 Month Notice. He testified that he did not apply for an extension of time to seek the cancellation of the 1 Month Notice.

At the hearing, the landlord confirmed that she had received multiple complaints about the noise coming from the tenant's rental unit. She entered into written evidence copies of multiple warning letters sent to the tenant regarding the noise complaints the landlord was receiving. She also entered into written evidence copies of letters of complaint from tenants in the rental

building, most of whom were then residing in nearby rental suites. At the hearing, a current tenant who resides next to the tenant, RW, and a former tenant who lived near the tenant, RP, gave sworn testimony to confirm that they sent written letters of complaint to the landlord about the noise and disturbance caused by the tenant.

The parties confirmed that the landlord has accepted the tenant's payments of \$670.69 for August, September, October and November 2017 for use and occupancy only and not to reinstate the tenancy beyond the effective date of the 1 Month Notice, July 31, 2017.

Analysis

Pursuant to section 56 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. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to a final and binding resolution of the issues currently before me and arising from the landlord's application under the following terms:

1. The parties agreed that this tenancy will end at 1:00 p.m. on December 15, 2017, by which time the tenant will have vacated the rental unit.
2. The tenant agreed to continue his current practice of minimizing the noise coming from his rental unit during the remaining period of his occupation of the rental unit.
3. The tenant agreed to pay the landlord \$335.35 (i.e., one half of the regular monthly rent), by December 1, 2017. The landlord agreed to accept this payment from the tenant for use and occupancy of the rental unit only until December 15, 2017. The landlord's acceptance of this payment from the tenant does not reinstate this tenancy.
4. The landlord agreed that the payment as outlined in Clause 3 of this settlement agreement constituted a full payment for use and occupancy only for the remaining period of the tenant's occupation of the rental unit. Furthermore, the landlord agreed to not pursue any additional occupancy payment from the tenant for any period beyond December 15, 2017, provided that the tenant vacates the rental unit by that date.
5. Both parties agreed that this resolution constituted a final and binding resolution of all issues in dispute arising out of the landlord's application, and that they entered into this settlement agreement of their own free will and volition, and without any element of coercion.

Conclusion

To give legal effect to the settlement agreement entered into by the parties, I issue the attached Order of Possession to take effect by 1:00 p.m. on December 15, 2017, to be used by the landlord if the tenant does not vacate the rental premises in accordance with their agreement. The landlord is provided with these Orders in the above terms and the tenant must be served

with an Order in the event that the tenant does not vacate the premises by the time and date set out in their agreement. 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.

As discussed at the hearing, the tenant is responsible for the sole remaining payment of \$335.35 to cover the tenant's occupation and use of the rental unit from December 1 to December 15, 2017. As agreed at the hearing, this tenancy ends as of December 15, 2017, and the tenant is not responsible for further payments for use and occupancy beyond December 15, 2017, provided he abides by the terms of this settlement agreement.

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: November 10, 2017

Residential Tenancy Branch