



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, OPR, MNR, FF (Landlord's Application)
 CNR, OPT, O (Tenant's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlord on September 1, 2017 and by the Tenant on September 13, 2017.

The Landlord applied for an Order of Possession for the Landlord's use of the property and a Monetary Order for unpaid rent, and to recover the filing fee. The Landlord amended his Application for an Order of Possession for unpaid rent.

The Tenant applied to cancel the notice to end tenancy for unpaid rent, for an Order of Possession for the rental unit, and for "Other" issues namely the request to cancel the notice to end tenancy for unpaid rent.

The Landlord, Landlord's legal counsel, two agents for the Landlord, the Tenant and the Tenant's wife appeared for the hearing. All testimony was taken under affirmation. The hearing process was explained to the parties and no questions were raised about how the proceeding would be conducted.

Preliminary Matters

The parties confirmed that the Tenant was still residing at the rental unit and the Tenant did not require an Order of Possession. Therefore, this portion of the Tenant's Application was dismissed.

At the onset of the hearing, the Tenant requested an adjournment of the proceedings on the basis that the issue of unpaid rent in this tenancy was linked to a dispute about an employment agreement between the parties that was before another tribunal.

The Landlord's legal counsel opposed the request citing the fact that the employment agreement between the parties had ended during this tenancy and the Tenant was asking for uncorroborated amounts owed to him in wages which the Landlord was disputing. Legal counsel stated that in any case, the requirement for the Tenant to pay

rent after the employment agreement had fallen, still applied and that issues were being treated and dealt with separately by each tribunal because the Tenant owed rent for occupancy of the rental unit after the employment had terminated.

I informed the parties that I would need to hear more evidence from them before I would be able to render a decision on whether the adjournment would be granted. As a result, I allowed the parties to continue giving their evidence and submissions as follows.

The Landlord confirmed receipt of the Tenant's Application and the Tenant's documentary evidence served prior to this hearing. However, the Tenant denied receipt of the Landlord's: Application; amended Application, and the documentary evidence.

The Landlord's agents testified that the Landlord's Application was served by posting the documents to the Tenant's door. The Tenant denied service of those documents in this way. In the absence of any corroboration or supporting evidence to show service, I was not satisfied that the Tenant had been served with the Landlord's Application. In any case, the Landlord was informed that Section 89(2) of the Residential Tenancy Act (the "Act") does not allow a monetary claim to be served by posting it to the door. In addition, an Order of Possession can be granted if the Tenant was not successful in having the notice to end tenancy for unpaid rent cancelled.

Accordingly, I moved to dismiss the Landlord's Application and provided leave to re-apply for the monetary claim. I found this course of action limited any prejudice or disadvantage to the parties. The parties had no objection to this course of action.

The parties continued to provide evidence on the background of this tenancy and the service of the notice to end tenancy. The Tenant confirmed receipt of the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "10 Day Notice") dated September 8, 2017 on September 11, 2017.

As a result, I determined that the form and contents of the 10 Day Notice complied with the requirements of Section 52 of the Act and that the Tenant applied to dispute it within the five day time limit provided for by Section 46(4) of the Act.

At the end of the hearing, I informed the parties that as the details of this dispute were complicated and extensive in nature, it would be prejudicial to the parties for me to make a decision on the request for adjournment without having time to consider all the background and evidence that had been provided.

In the alternative, I offered both parties an opportunity to resolve the matter that was before me by mutual agreement. 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.

The parties considered this voluntary form of resolution and discussed the issues between them. The parties then turned their minds to compromise and were able to reach an agreement to mutually end the tenancy as follows.

Settlement Agreement

The parties agreed to end the tenancy on January 8, 2018 at 1:00 p.m. The Landlord is issued with an Order of Possession effective for this date and time. This order is enforceable in the Supreme Court of British Columbia as an order of that court **if** the Tenant fails to provide the Landlord with vacant possession of the rental unit. Copies of this order are attached to the Landlord's copy of this Decision. The parties agreed that the terms and conditions of this agreement were made voluntarily without any pressure or coercion.

The Landlord is at liberty to re-apply for his monetary claim. The Tenant's Application is dismissed without leave as the tenancy is now ending by mutual agreement on January 8, 2018.

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: December 04, 2017

Residential Tenancy Branch