



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU, FFL, CNR, OLC

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for unpaid rent and utilities pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

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.

Preliminary Issues – Service of Documents

The tenant confirmed that he received the landlord's 10 Day Notice, posted by the landlord on his door on November 3, 2017. I find that the tenant was duly served with the 10 Day Notice in accordance with section 88 of the *Act*.

The landlord testified that he posted a copy of his dispute resolution hearing package on the tenant's door on November 15, 2017. The tenant testified that he did not receive this package. As the landlord did not supply any proof of service documentation or produce any witness who observed him post his hearing package on the tenant's door, I find that the landlord has not adequately demonstrated service of his dispute resolution hearing package to the tenant. At the hearing, I advised the parties that I would be unable to consider the landlord's application as there was insufficient evidence that the package was served to the tenant in accordance with section 89 of the *Act*.

The landlord confirmed that he received a copy of the tenant's dispute resolution hearing package and written evidence package sent by the tenant by registered mail on November 23, 2017. I find that the landlord was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should any other orders be issued with respect to this tenancy?

Background and Evidence

The landlord testified that he purchased this rental property in 2005. He said that the tenant was living in the ground level suite of this two unit rental property at that time. The tenant testified that he commenced his tenancy with the previous landlord in 2003. The landlord lives above the tenant's suite.

The parties agreed that they had no written tenancy agreement. The 86-year old tenant gave undisputed sworn testimony that his monthly rent was set at \$500.00, when this tenancy began. The tenant said that he paid the previous landlord a \$250.00 security deposit when he first occupied his rental suite, an amount apparently still held by the current landlord.

The landlord testified that the monthly rent gradually increased over time from \$500.00 to the current rent of \$900.00. The landlord also testified that the tenant's responsibility for utilities paid by the landlord has increased from \$50.00 per month to \$90.00 per month. The landlord also testified that BC Housing was involved in providing some form of payment or subsidy regarding this tenancy, although he produced no written documentation regarding this feature of the tenancy. The landlord did not provide a clear explanation of how this affected the amounts the landlord claimed were owing for this tenancy.

The tenant testified that his monthly rent has always been \$500.00, and that he has never been responsible for any portion of the utilities for this rental property.

The landlord testified that no Notice of Rent Increases have been issued to the tenant on Residential Tenancy Branch forms, nor has the tenant ever given his written agreement to increase the monthly rent or to assume any portion of the landlord's utility bills for this property.

The landlord's 10 Day Notice identified \$2,700.00 in unpaid rent and \$270.00 in utilities owing for this rental suite as of November 3, 2017.

The tenant testified that he has paid the correct monthly rent owing for this tenancy until December 2017. He said that he had delayed paying his December 2017 rent, pending the outcome of this hearing.

Analysis

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 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 the following final and binding resolution of all issues currently under dispute and their respective applications:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on March 15, 2018, by which time the tenant and any other occupant will have vacated the rental unit.
2. The tenant agreed to pay the landlord \$500.00 on December 11, 2017, the sum of monthly rent currently owing for the month of December 2017.
3. The tenant agreed to make monthly payments of \$500.00 to the landlord by January 1 and February 1, 2018, the monthly rent that is due upon those dates in accordance with the oral tenancy agreement for this tenancy.
4. The tenant agreed to pay \$250.00 by March 1, 2017, to cover the rental period from March 1 until the end of this tenancy on March 15, 2017.
5. The landlord agreed to accept payments from the tenant as outlined in Clauses 2, 3 and 4 of this settlement agreement for use and occupancy only and not to reinstate this tenancy beyond March 15, 2017.
6. The landlord agreed to issue the tenant written receipts for any and all payments made by the tenant for the remainder of this tenancy.
7. Both parties agreed that the monetary terms of this settlement agreement as outlined above constituted a full resolution of all monetary issues currently in dispute arising out of this tenancy.
8. The landlord agreed to not interfere with the tenant's visitors as long as they are not disturbing the landlord or other nearby residents of the area.
9. Both parties agreed that this settlement agreement constituted a final and binding resolution of their applications for dispute resolution and all issues currently in dispute arising out of this tenancy at this time and that they did so of their own free will and without any element of force or coercion.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant does not vacate the rental premises by March 15, 2018, 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.

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlord's favour in the amount of \$500.00, to be used **only** in the event that the tenant does not abide by the terms of Clause 2 of the settlement agreement outlined above.

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible after any failure to abide by the terms of Clause 2 of the settlement agreement. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

To give legal effect to the settlement agreement between the parties, I order that the total monthly rent for the remainder of this tenancy is set at \$500.00. I further order that the tenant is not responsible for any utility payments for this tenancy. I also order that the rent owing for the month of March 2018 is set at \$250.00, the final half month of this tenancy.

I order the landlord to provide written receipts to the tenant for all payments made by the tenant for the remainder of this tenancy.

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: December 12, 2017

Residential Tenancy Branch