



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

MG appeared on behalf of the landlord as agent, and had full authority to do so. PR appeared as counsel for the tenant, and represented the tenant in this hearing. 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 confirmed receipt of the tenant's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the 1 Month Notice on October 25, 2017, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

Preliminary Issue - Adjournment of Hearing

At the outset of the hearing, the tenant's counsel requested an adjournment of the hearing as he was just recently retained a few days before the hearing date, and did not have the opportunity to review all the documentation. The tenant's counsel submitted that the tenant had a fixed-income, and this was the reason for the delay in retaining counsel. The landlord was ready to proceed with the hearing, and was opposed to the adjournment as they felt that the tenant's application was originally filed in November 2017, and the tenant had ample opportunity to prepare for the hearing.

During the hearing, I advised both parties that I was not granting an adjournment of this hearing. I did so after taking into consideration the criteria established in Rule 7.9 of the *RTB Rules of Procedure*, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

In reaching my decision, I note that although the tenant's counsel was just recently retained due to the tenant's financial circumstances, both parties had ample time to prepare for today's hearing. The retention of counsel is not required, and was a decision made by the tenant. I find that an adjournment of the hearing would be prejudicial to the landlord who attended the hearing, and was ready to proceed. I find that an adjournment would delay this matter which pertains to a Notice to End Tenancy issued to the tenant in October of 2017, and a further delay in a resolution of this matter would be prejudicial to the landlord. For these reasons, the tenant's adjournment application is not granted.

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 discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. The tenant agrees to park her scooter in her designated scooter parking spot.
2. The tenant agrees to not smoke on the property.
3. The tenant may not enter any other tenant's unit without their expressed permission. If the tenant is asked to leave another tenant's unit the tenant must do so immediately.
4. Both parties agreed that this tenancy will continue per the *Act* on the condition that the tenant abides by conditions #1-3 of this agreement.
5. Both parties agreed that this tenancy will end in the event that the tenant fails to abide by any of the conditions #1-3 in the agreement, and that the tenant and all occupants will vacate the rental unit within two days of being served the Order of Possession.
6. The landlord withdrew the 1 Month Notice dated October 25, 2017.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute.

Conclusion

To give effect to the settlement reached between the parties and as discussed with them during the hearing, I issue an Order of Possession to the landlord, effective two days after service of this Order on the tenant.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order **only** in the event that the tenant does not abide by conditions #1, 2 or 3 of the above settlement. 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.

The landlord's 1 Month Notice, dated October 25, 2017, is cancelled and is of no force or effect.

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: January 15, 2018

Residential Tenancy Branch