



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

Dispute Codes CNC, MNDCT, OLC

Introduction

On January 9, 2018, a hearing was held by an arbitrator appointed under the *Residential Tenancy Act* (the *Act*) for consideration of the tenant's application for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Only the landlord attended that hearing. The original arbitrator dismissed the tenant's application and issued an Order of Possession to the landlord.

On January 16, 2018, another arbitrator appointed under the *Act* considered the tenant's application for review consideration on the basis that the tenant had been unable to participate in the January 9, 2018 due to a problem she encountered in connecting with that teleconference hearing. In the review consideration decision of January 16, 2018, the existing decision and order were suspended pending the outcome of a reconvened hearing scheduled for February 26, 2018. I have undertaken responsibility for conducting this reconvened hearing and report the outcome of that hearing as follows:

Both parties attended the reconvened 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.

As the tenant confirmed that she received the landlord's 1 Month Notice on October 29, 2017, I find that she was duly served with that Notice in accordance with section 88 of the *Act*. As the landlord confirmed that she received both the tenant's original dispute resolution hearing package and the notice of the reconvened hearing and review consideration decision, I find that she was duly served with these documents in accordance with section 89 of the *Act*. Since the

tenant confirmed receipt of copies of the landlord's written evidence package, I find that she was duly served with this package in accordance with section 88 of the *Act*.

At the hearing, the landlord's legal counsel also advised that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) had been served to the tenant on February 3, 2018, for unpaid rent still owing for February 2018.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to a monetary award for losses arising out of this tenancy? Should any orders be issued against the landlord with respect to this tenancy?

Background and Evidence

This month-to-month tenancy for occupancy of the rental unit as of September 1, 2017 was signed by the parties on August 28, 2017. Monthly rent is set at \$850.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$425.00 security deposit paid on August 28, 2017.

Both parties agreed that no rent has been paid by the tenant for February 2018.

The landlord issued the 1 Month Notice for the following reason identified in a copy of that Notice entered into written evidence by the parties:

Rental unit must be vacated to comply with a government order.

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 their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on March 1, 2018, by which time the tenant will have surrendered vacant possession of the rental unit to the landlord.
2. The tenant agreed to allow the landlord to retain the tenant's security deposit of \$425.00.
3. The landlord agreed to accept the tenant's security deposit in lieu of any rent for February 2018.

4. The landlord reserved the right to make a claim for damage at the end of this tenancy in the event that there has been damage occurring during the course of this tenancy for which the tenant is responsible.
5. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenant's application 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 if the tenant does not vacate the rental premises in accordance with their agreement by 1:00 p.m. on March 1, 2018. 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 accordance with the settlement agreement as outlined above, I order the landlord to retain the tenant's security deposit in full payment of all outstanding rent owing for this tenancy.

The landlord remains at liberty to apply for a monetary claim for damage arising out of this tenancy in the event that the landlord believes that damage has occurred for which the tenant is responsible.

This decision takes the place of the decision and order of January 9, 2018, which is set aside and of no continuing 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: February 26, 2018

Residential Tenancy Branch