



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR MNRL MNDCL FFL

Introduction

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

- an Order of Possession for unpaid rent or utilities, pursuant to section 55;
- a monetary order for unpaid rent or utilities, pursuant to section 67;
- a monetary order for monetary loss or money owed pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

TB ('landlord') appeared and testified on behalf of the landlord in this hearing. CL ("tenants") appeared on behalf of the tenants 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 tenants confirmed receipt of the landlord's application for dispute resolution hearing and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with the landlord's application and evidence. The tenants did not submit any written evidence for this hearing.

As the tenants confirmed receipt of the 10 Day Notice to End Tenancy dated November 10, 2017, I find that the tenants were duly served with the 10 Day Notice on November 10, 2017.

Preliminary Issue: Adjournment of Hearing

At the outset, the tenants made an application requesting an adjournment as the tenant CL was ill, and did not have time to submit any evidence for the hearing. The tenant CL

was unable to describe what medical condition she had, but stated that she thought it was the flu. The tenant CL also argued that he required an adjournment to submit further evidence with respect to this matter. The landlord opposed the application for an adjournment stating that the matter had been outstanding since November 2017, and both parties had ample opportunity to prepare for the hearing.

Rule 6 of the Residential Tenancy Branch Rules of Procedure state that the “Residential Tenancy Branch will reschedule a dispute resolution proceeding if written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least 3 business days before the scheduled date for the dispute resolution hearing”. While the tenant testified that he had been out of town for approximately one week, he had not taken steps to attempt to adjourn this proceeding beforehand. Nor did the tenant have an agent attend to either explain why he could not attend or represent him at the hearing, subject to Rule 6.

The criteria provided for granting an adjournment, under Rule 6.4 are;

- whether the purpose for the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1...
- whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether the party had sufficient notice of the dispute resolution hearing...
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- the possible prejudice to each party.

The tenant CL testified that her illness prevented her from being able to submit evidence for this hearing. On further canvassing about the particulars of her illness, the tenant CL was unable to testify to the details of the illness she was suffering from, and how it prevented her from preparing for this hearing. The tenant did not provide further details other than the fact she was ill, and in the absence of this information I find that the tenant CL has not demonstrated that the lack of preparation or submission of evidence for this hearing was not due to the intentional actions or neglect of the tenants.

As this matter pertains to the matter of a significant amount of unpaid rent, I find the landlord would be significantly prejudiced by a delay in this matter by adjourning the hearing and delaying this matter when the landlord claims they have not been receiving rent and cannot rent out the unit to anyone else.

The request for an adjournment was not granted. The hearing proceeded.

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 agreed to pay to the landlord the sum of \$8,530.00 in satisfaction of all outstanding rent on or before November 30, 2018.
2. Both parties entered into a mutual agreement that this tenancy will end on March 15, 2018 at 1 p.m., by which date the tenant(s) and any other occupants will have vacated the rental unit.
3. Both parties agreed that this tenancy ends by way of their mutual agreement to end this tenancy and not on the basis of the landlord's 10 Day Notice, dated November 10, 2017.
4. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenant's application.

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, which is to take effect by 1:00 p.m. on March 15, 2018.

The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order in the event that the tenant does not abide by condition #2 of the above settlement. Should the tenant(s) 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, and as advised to both parties during the hearing, I issue a Monetary Order in the landlord's favour in the amount of \$8,530.00. The landlord provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible in the event that the landlord does not abide by condition #1 of the above agreement. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's 10 Day Notice, dated November 10, 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: February 14, 2018

Residential Tenancy Branch