



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, OPR, MNRL-S, MNDCL-S, FFL

Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and losses arising out of this tenancy pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; 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.

As the tenant confirmed that they were handed the 10 Day Notice by the landlord on March 7, 2018, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the tenant confirmed that they received a copy of the landlord's dispute resolution hearing package and written evidence package sent by the landlord by registered mail on March 29, 2018, I find that the tenant was duly served with these packages in accordance with sections 88, 89 and 90 of the *Act*.

Although the tenant applied for dispute resolution on March 12, 2018, the tenant said that they did not serve the landlord with a copy of their application or the tenant's dispute resolution hearing package. The landlord's agent (the agent) testified that they were aware that the tenant had submitted an application to the Residential Tenancy Branch with respect to this tenancy, but had never received a copy of the tenant's application. Since the tenant did not serve a copy of their application to the landlord, I dismiss the tenant's application without leave to reapply.

The landlord's application sought a monetary award of \$11,500.00. As this amount included anticipated loss of rent for May and June 2018, the agent lowered the amount of the requested monetary award from \$11,500.00 to \$6,900.00.

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? Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant? Should any other orders be issued with respect to this tenancy?

Background and Evidence

On January 28, 2018, the landlord and the tenant signed a six-month fixed term tenancy agreement. According to the terms of this agreement, entered into written evidence by the landlord, monthly rent was set at \$2,300.00, payable in advance on the first of each month commencing on February 1, 2018. The landlord continues to hold the tenant's \$1,150.00 security deposit paid on January 30, 2018.

The landlord's agent gave undisputed sworn testimony that the tenant has not paid any rent towards this tenancy since it commenced in February 1, 2018. The tenant confirmed that they have not paid any rent regarding this tenancy. The tenant said that they were planning to vacate the rental unit by April 30, 2018, at the latest.

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, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

The parties agreed to the following final and binding resolution of their applications:

1. The tenant agreed to pay the landlord \$2,300.00 by the end of the day on April 18, 2018 for use and occupancy only of the rental premises for the month of April 2018. The tenant committed to make this payment by way of an e-transfer of funds to the landlord.
2. The landlord agreed to accept the above payment for use and occupancy only for the month of April 2018, and not to extend this tenancy beyond April 30, 2018.
3. In the event that the tenant complies with the monetary terms as outlined in Clause 1 of this settlement agreement, the tenant agreed to vacate the rental unit by 1:00 p.m. on April 30, 2018.
4. In addition to the payment outlined in Clause 1 of this settlement agreement, the tenant agreed to pay the landlord a total of \$4,600.00 in outstanding rent for the months of February and March 2018, less the value of the tenant's \$1,150.00 security deposit plus the recovery of the landlord's \$100.00 filing fee.
5. Both parties agreed that this constituted a final and binding resolution of all issues in dispute in their applications and did so on the basis of their own free will and without any element of coercion.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached 2 Day Order of Possession to be used by the landlord before April 30, 2018, **only** if the tenant does not comply with the monetary terms of Clause 1 of their settlement agreement. This 2 Day Order of Possession may also be used in the event that the tenant complies with the monetary terms of Clause 1 of their settlement agreement **and** fails to vacate the rental premises in accordance with their settlement agreement by 1:00 p.m. on April 30, 2018. The landlord is provided with these Orders in the above terms and the tenant must be served with these Orders in the event that the tenant does not vacate the premises in accordance with 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 \$5,850.00. This amount is calculated on the basis of the following:

Item	Amount
Unpaid February 2018 Rent	\$2,300.00
Unpaid March 2018 Rent	2,300.00
Unpaid April 2018 Rent	2,300.00
Less Security Deposit	-1,150.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$5,850.00

I have included unpaid rent for April 2018 in this monetary Order. In the event that the tenant complies with the monetary commitment made in Clause 1 of the settlement agreement, the landlord would only be allowed to collect that portion of unpaid rent that remains owing.

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. 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.

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: April 16, 2018

Residential Tenancy Branch