



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCT MNRT OLC PSF RP RR

Introduction

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

- a monetary order for compensation for loss or money owed, and emergency repairs under the *Act*, regulation or tenancy agreement pursuant to section 67.
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

As the parties or their representatives were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution ('application'). The landlords confirmed receipt of the tenant's application. In accordance with section 89 of the *Act*, I find that the landlords were duly served with the tenants' application. All parties confirmed receipt of each other's evidentiary materials. Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing. The landlord confirmed in the hearing that even though the tenant's evidence was submitted late, the landlord took no issue with the evidence being considered.

At the outset of the hearing the name of the landlords were clarified as two parties, and not one as indicated in the tenant's application. As neither party had an issue with the correction, the tenant's application was amended to reflect the proper names of the two landlords in this dispute.

This hearing was originally set to deal with the tenant's one application only, but it came to my attention during the hearing that the same parties had a second matter set for a hearing on May 10, 2018 at 9:00 a.m. to deal with the tenant's application pertaining to this same tenancy for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49; and
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

Both parties appeared, and with their consent, both applications were dealt with today. Accordingly the hearing scheduled for May 10, 2018 is cancelled, and attendance of either party is not required for that appearance. Both parties 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 Issue: Adjournment of Hearing

At the outset, the tenant made an application requesting an adjournment as the tenant was feeling ill, and as a result was not able to submit all her evidence for the hearing. The tenant testified that she was not feeling completely well, and wanted to reschedule the hearing for that reason. The landlords opposed the application for an adjournment stating that the matter had been outstanding since February 2018, and both parties had ample opportunity to prepare for the hearing.

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 testified that her medical condition prevented her from being able to submit all her evidence for this hearing. Although the tenant provided proof of her upcoming surgery scheduled for June 2018, I find that the tenant 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 tenant.

As this matter has been outstanding since February 2018, and as I find that the tenant has not demonstrated that her medical condition is the main reason for her lack of preparation for the hearing, I find the landlords would be prejudiced by a delay in this

matter by adjourning the hearing and delaying this matter when the landlords are in attendance with all their representatives, and are ready to proceed.

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. Both parties entered into a mutual agreement that this tenancy will end on July 31, 2018 at 1:00pm by which time the tenant and any other occupants will have vacated the rental unit.
2. Both parties agreed that this tenancy ends by way of their mutual agreement to end this tenancy, and not on the basis of the landlords' 2 Month Notice, dated February 7, 2018, which the parties agreed is withdrawn.
3. The tenant agreed that both her applications for today's date and the future hearing scheduled for May 10, 2018 are withdrawn.
4. Both parties agreed that the tenant would not owe the landlord rent for this tenancy for the period of May 1, 2018 through to July 31, 2018.
5. The landlords agreed to pay the tenant a lump sum payment in the amount of \$1,488.00 by way of a bank draft, on or before 1:00pm on July 31, 2018.
6. The tenant agreed that she will not seek any further monetary compensation from the landlords arising out of this tenancy, with the exception of matters pertaining to the security deposit, which will be dealt with at the end of this tenancy and in accordance with the *Act*.
7. Both parties agreed that this settlement agreement constituted a final and binding resolution of all matters under dispute at this time.

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 landlords, which is to take effect by 1:00 p.m. on July 31, 2018.

The landlords are 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 #1 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 tenant's favour in the amount of \$1,488.00. The tenant is provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible in the event that the landlord(s) do not abide by condition #5 of the above agreement. Should the landlord(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 landlords' 2 Month Notice, dated February 7, 2018, 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: April 30, 2018

Residential Tenancy Branch