



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CYCLONE HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNDC, FF; CNC

Introduction

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

- an order of possession for cause, pursuant to section 55;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated February 23, 2018 ("1 Month Notice"), pursuant to section 47.

The landlord's agent ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that she was the manager for the landlord company named in both applications and that she had permission to speak on its behalf as an agent at this hearing. This hearing lasted approximately 51 minutes in order to allow both parties to negotiate a full settlement of both applications and to allow the tenant additional time to make a decision regarding the settlement.

The landlord confirmed receipt of the tenant's notice of hearing and application for dispute resolution. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and notice of hearing.

The tenant confirmed that she did not serve her written evidence package to the landlord. As per Rule 3.1 of the Residential Tenancy Branch *Rules of Procedure*, I notified both parties at the hearing that I could not consider the tenant's written evidence package because it was not served to the landlord. In any event, I was not required to consider this evidence because both parties decided to settle their applications.

The landlord testified that she served the landlord's application for dispute resolution hearing package to the tenant on April 13, 2018, by way of registered mail. The landlord provided a Canada Post receipt and tracking number with its application. The tenant stated that she did not receive a copy of the landlord's application because she did not pick up her mail, despite receiving a notice to do so, since she worked during the hours when the Canada Post office was open. She confirmed that she did not notify the landlord about this issue or provide an alternate service address to the landlord. In accordance with sections 89 and 90 of the *Act*, I found that the tenant was deemed served with the landlord's application on April 18, 2018, five days after its registered mailing. In any event, the landlord's 1 Month Notice was to be dealt with by both parties because the tenant applied to cancel it in her own application. The tenant also confirmed that she wanted to settle both applications at this hearing.

The tenant confirmed receipt of the landlord's 1 Month Notice. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice and she applied to cancel it in her own application.

Settlement Terms

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 and orders. 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 agreed that this tenancy will end by 1:00 p.m. on July 31, 2018, by which time the tenant and any other occupants will have vacated the rental unit;
2. The landlord agreed that the landlord's 1 Month Notice, dated February 23, 2018, was cancelled and of no force or effect;

3. The landlord agreed to bear the cost of the \$100.00 filing fee paid for its application;
4. Both parties agreed that the landlord will retain \$229.16 from the tenant's security deposit of \$370.00 and the remainder of the tenant's security deposit of \$140.84 will be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.
5. Both parties agreed that this settlement agreement constitutes a final and binding resolution of both applications at this hearing.

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

Initially, the tenant was unsure whether she wanted to move out of the rental unit. I provided her with extra time during the hearing in order to make this decision. The tenant also consulted with a friend, in person, during the hearing, who helped her make her decision to move out of the rental unit. The tenant confirmed verbally, under oath, a number of times during the hearing, that she was sure that she wanted to settle both applications, move out of the rental unit and she did not feel pressured to do so. On this basis, I enforced the above settlement.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on July 31, 2018. The tenant must be served with this Order in the event that the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on July 31, 2018. 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 February 23, 2018, is cancelled and of no force or effect.

The landlord agreed to bear the cost of the \$100.00 filing fee paid for its application.

I order the landlord to retain \$229.16 from the tenant's security deposit of \$370.00. The remainder of the tenant's security deposit of \$140.84 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

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: May 08, 2018

Residential Tenancy Branch