



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTLAND TELFORD LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNR, OPRM-DR

Introduction

This hearing dealt with applications from both the landlord and Tenant H(T)A (the tenant) under the *Residential Tenancy Act* (the *Act*). The landlord identified all three tenants noted above in the landlord's application for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant, represented by Agent DD (the agent) at this hearing, applied for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice pursuant to section 46.

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 agent noted at the outset of the hearing that they had just discovered 15 minutes prior to this hearing that the tenant had been hospitalized for the past five days. As the agent had been assisting the tenant throughout this process and represented the tenant's interests in discussions with the landlord's representatives throughout the course of this process for the tenant, the agent said that he was empowered to act on the tenant's behalf at this hearing.

The agent confirmed that the tenant received the 10 Day Notice posted on the door of this rental unit on May 4, 2018. As such, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. The landlord confirmed that on May 29, 2018, they received a copy of the tenant's dispute resolution hearing package and written evidence sent by the tenant and his agent by registered mail on May 23, 2018. I find that the landlord was duly served with these packages in accordance with sections 88 and 89 of the *Act*.

The landlord's representatives testified that their dispute resolution hearing package and written evidence were provided to the tenants in two separate ways. First, these packages were handed to Tenant HR on May 15, 2018 at the rental unit. A second means of service was provided by sending each of the three tenants separate dispute resolution hearing packages and written evidence by registered mail on May 23, 2018. However, by that date, the landlord already knew that both Tenant HR and Tenant NL had vacated the rental unit, without leaving any forwarding address. The landlord provided a Canada Post Tracking Number to confirm the registered mailing of the packages to Tenant H(T)A. Although the agent was unaware of the tenant having received a copy of the landlord's dispute resolution hearing package and written evidence package, in accordance with sections 88,89 and 90 of the *Act*, I find that the tenant was deemed served with these documents on May 28, 2018, the fifth day after their registered mailing. I also find that Tenant HR was served with these packages in accordance with sections 88 and 89 of the *Act* on May 15, 2018, as declared by the landlord.

I do not find that Tenant NL has been served with these documents, so the landlord's application against NL is dismissed. I noted that this is of little bearing to the matters at hand, as Tenant NL has already vacated the rental unit and the landlord's representatives advised that they are no longer pursuing a monetary award against Tenant NL or Tenant HR.

Issues(s) to be Decided

Should the tenant be granted an extension of time to file an application to cancel the landlord's 10 Day Notice? 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 a monetary award for unpaid rent?

Background and Evidence

This tenancy began on July 1, 2017. Monthly rent is set at \$1,060.00, payable in advance on the first of each month. The tenants paid a \$530.00 security deposit on June 1, 2017. The landlord's representatives said that they have returned one half of that deposit to Tenants HA and NL. HA is the son of Tenant H(T)A. The landlord retains the remaining \$265.00 of this security deposit.

The landlord testified that when there was a leak in the tenants' rental unit, they allowed the tenants to relocate temporarily to a nearby rental unit on the same floor of this building. Those in attendance at the hearing were uncertain as to whether the tenant had actually relocated to the nearby rental unit at any point in time. At any rate, the tenant remains in the rental unit after his son and Tenant NL vacated the rental property in mid-May 2018. The agent said that the tenant is actively seeking alternate accommodation as the tenant realizes that he cannot possibly pay this amount of rent himself.

The landlord's application was to obtain an end to this tenancy as there have been no rent payments to the landlord by any of the tenants from March 2018 until the present. It appears that the landlord allowed the tenants to withhold paying rent for March and April 2018, under the understanding that they would be vacating the rental unit by the end of April 2018. The landlord's 10 Day Notice identified \$1,060.00 as owing for May 2018, when the tenants did not vacate the rental property when rent became due for May 2018.

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 in attendance engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute. While the agent was only representing the interests of the tenant in this matter, the negotiations involved only the landlord and the tenant, as the other tenants have vacated the rental unit and the landlord is not pursuing further action against them.

Both parties represented at this hearing 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 June 30, 2018, by which time the tenant and all other occupants will have surrendered vacant possession of the rental unit to the landlord.
2. The landlord agreed to return the remaining \$265.00 of the security deposit still held by the landlord for this tenancy to the tenant.
3. Both parties agreed that this settlement agreement constituted a final and binding resolution of all issues arising out of the applications currently before me 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. 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 order to implement the above settlement reached between the parties, I order the landlord to return the remaining \$265.00 of the security deposit still held by the landlord for this tenancy to the tenant.

The landlord's application naming Tenant NL is dismissed.

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: June 26, 2018

Residential Tenancy Branch