



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

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

- cancellation of the landlord's One Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The landlord's agent J.R. (herein referred to as "the landlord") attended the hearing, assisted by the representative for the building manager D.H. The tenant served the landlord with the application for this dispute resolution hearing by sliding it under the office door. The landlord confirmed receipt of the tenant's application. The landlord served the tenant with their evidentiary materials by notifying the tenant via text message on August 1, 2018, that the materials were available to be picked up. The tenant confirmed receipt of the landlord's evidence package. Based on the undisputed testimonies of the parties, although neither party served their materials for this hearing in accordance with sections 88 or 89 of the *Act*, or within the timelines for service provided in the Residential Tenancy Branch Rules of Procedure, I find that both parties were sufficiently served in accordance with section 71(2)(c) of the *Act*.

Preliminary Issue – Procedural Matters

As a procedural matter, I explained to both parties that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, I explained to both parties that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

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. This tenancy will end at 1:00 p.m. on October 31, 2018, by which time the tenant and any other occupants will have vacated the rental unit.
2. As the tenant is seeking other subsidized rental accommodation, the tenant may need to accept another rental opportunity on short notice. Therefore, for the sole benefit of the tenant, the tenant is allowed to provide the landlord with as little as TWO DAYS notice to end the tenancy. The landlord has agreed that the tenant shall not be held accountable for providing one month's rent as compensation for any short notice provided.
3. This tenancy ends by way of this settlement and both parties agree that: the landlord's One Month Notice dated June 5, 2018 is cancelled and of no further force or effect; and the tenant's application for dispute resolution in its entirety is cancelled.
4. Both parties agreed that the terms of this settlement as outlined above constitute a final and binding resolution of the tenant's application, the landlord's notice,

and all issues currently under dispute at this time, and that they agreed free of any duress or coercion.

The parties are still bound by all of the rights, responsibilities, terms, conditions and any statutory compensation provisions of the tenancy agreement, the Act, and the associated regulations.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue to the landlord the attached Order of Possession to be served on the tenant by the landlord **only** if the tenant fails to vacate the rental unit **by 1:00 p.m. on October 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 One Month Notice dated June 5, 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: August 8, 2018

Residential Tenancy Branch