



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, OT

Introduction

On September 11, 2018, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

The Tenants and Landlord both attended the hearing. All in attendance provided a solemn affirmation.

The Tenants advised that they served the Landlord with the Notice of Hearing package and evidence by registered mail and the Landlord confirmed that he received this. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been served with the Notice of Hearing and evidence.

The Landlord advised that he served his evidence to the Tenants by placing it in their mailbox on October 11, 2018 and they confirmed that they received it. As such, I am satisfied that the evidence has been satisfactorily served on the Tenants in accordance with Rule 3.15 of the Rules of Procedure, and it was considered when rendering this decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlord’s Notice, and the other claims were dismissed. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when Tenants submit 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*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenant are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on December 1, 2017 and that rent is currently \$1,490.00 per month, due on the first day of each month. A security deposit of \$700.00 and a pet damage deposit of \$700.00 were also paid.

All parties agreed that the Notice was served to the Tenants by being posted to the door on September 2, 2018 and the Tenants confirmed that they received the Notice. The reason the Landlord served the Notice is because the “Tenant has not done required repairs of damage to the unit/site”. The Notice indicated that the effective end date is October 3, 2018.

The parties provided testimony with respect to the reason on the Notice; however, the topic of a settlement was brought up by the parties.

Settlement Agreement

The possibility of a settlement was raised, pursuant to Section 63(1) of the *Act*, which allows an arbitrator to assist the parties to settle the dispute. I explained to the parties that settlement discussions are voluntary, that if they chose not to discuss settlement I would make a final and binding decision on the matter, and that if they chose to discuss settlement and did not come to an agreement, that I would make a final and binding decision on the matter.

I advised the parties that if they did come to an agreement, I would write out this agreement in my written decision and make any necessary orders. I also explained that the written decision would become a final and legally binding agreement. The parties did not have questions about discussing a settlement when asked.

The parties engaged in a discussion on what would be an amenable settlement for both parties. The Landlord and the Tenants agreed as follows:

1. The Notice of September 2, 2018 is cancelled and of no force or effect.
2. The Tenants and Landlord agreed that the Tenants will have possession of the rental unit but must vacate the rental unit by **December 31, 2018 at 1:00 PM**.
3. Rent will be paid in full on the day rent is due for November and December 2018.
4. The parties agreed that fulfilment of these conditions would amount to full and complete satisfaction of this Application.

This agreement is fully binding on the parties and is in full and final satisfaction of this dispute.

If condition two is not satisfactorily complied with, the Landlord is granted an Order of Possession effective **December 31, 2018 at 1:00 PM after service of this Order** on the Tenants.

This settlement agreement was reached in accordance with Section 63 of the *Act*. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the binding nature of this full and final settlement of these matters.

Conclusion

I have recorded the terms of settlement in this decision and in recognition of the settlement agreement, based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of September 2, 2018 to be cancelled and of no force or effect.

In addition, in support of the settlement described above and with agreement of both parties, I grant the Landlord a conditional Order of Possession, to serve and enforce upon the Tenants if necessary, effective **December 31, 2018 at 1:00 PM**. This Order must be served on the Tenants. If the Tenants fail to comply with this Order, the Landlord may file the Order with the Supreme Court of British Columbia and be enforced as an Order 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: October 23, 2018

Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.gov.bc.ca/landlordtenant) has information about:

- How and when to enforce an order of possession:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to enforce a monetary order:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to have a decision or order corrected:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the correction process
- How and when to have a decision or order clarified:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the clarification process
- How and when to apply for the review of a decision:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the review process
Please Note: Legislated deadlines apply

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.gov.bc.ca/landlordtenant

Residential Tenancy Branch

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