



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNRT

Introduction

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

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use (Two Month Notice) pursuant to section 49 of the *Act*, and
- a monetary order for the cost of emergency repairs paid by the tenant pursuant to section 33 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 tenant testified that he served the landlord with the Notice of Dispute Resolution Proceeding package and his evidence for this hearing by Canada Post registered mail, which was confirmed by the landlord. The landlord confirmed that he did not submit any evidence in this matter. Based on the undisputed testimonies of the parties, I find that the tenant's application for this hearing was served in accordance with section 89 of the *Act*.

Procedural Matters

I explained to the 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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised 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 the issues currently under dispute at this time:

1. This tenancy will end at 1:00 p.m. on November 30, 2018, by which time the tenant and any other occupants will have vacated the rental unit.
2. The landlord agreed to waive the requirement for the tenant to pay rent for the months of October and November 2018.
3. The landlord agreed to pay the tenant the amount of \$500.00 by cheque no later than 5:00 p.m. on September 28, 2018 in full and final satisfaction of the tenant's claim for repair costs in relation to the rental unit.
4. By way of this settlement, both parties agreed that: the landlord's request to end the tenancy dated July 3, 2018 is cancelled and of no further force or effect; and the tenant's application for dispute resolution in its entirety is cancelled.
5. Both parties agreed that the terms of this settlement as outlined above constitute a final and binding resolution of the tenant's application and the landlord's request to end tenancy, 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 November 30, 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 letter requesting to end the tenancy dated July 3, 2018 is cancelled and is of no force or effect. The tenant's application in its entirety is dismissed without leave to reapply.

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: September 27, 2018

Residential Tenancy Branch