



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 19, 2018 (the Tenant's Application). The Tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"). The Tenant also sought to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice").

The Tenant appeared at the hearing with a witness who left the room until required. The Landlord appeared at the hearing with G.S. to assist with translation. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The Tenant had not submitted evidence. I addressed service of the hearing package and evidence. The Landlord confirmed he received the hearing package. The Tenant said she did not receive the Landlord's evidence. The Landlord confirmed the evidence was not served on the Tenant.

I obtained the position of the parties on admitting or excluding the Landlord's evidence. I determined it was necessary to exclude the evidence as it was not served on the Tenant in accordance with the Rules of Procedure and due to the nature of the evidence. I found it would be unfair to the Tenant to admit the evidence when she had not received it and could not speak to it during the hearing.

There was no issue that there is a tenancy agreement in this matter.

During the hearing, I raised the possibility of settlement pursuant to section 63(1) of the *Residential Tenancy Act* (the “*Act*”) which allows an arbitrator to assist the parties to settle the dispute.

I explained the following to the parties. Settlement discussions are voluntary. If they chose not to discuss settlement that was fine, I would hear the matter and make a final and binding decision in the matter. If they chose to discuss settlement and did not come to an agreement that was fine, I would hear the matter and make a final and binding decision in the matter. If they did come to an agreement, I would write out the agreement in my written decision and make any necessary orders. The written decision would become a final and legally binding agreement and neither party could change their mind about it later.

The parties agreed to discuss settlement and a discussion ensued.

Prior to ending the hearing, I confirmed the terms of the settlement agreement with the parties. I told the parties I would issue an Order of Possession. I confirmed with the parties that all issues had been covered. The parties confirmed they were agreeing to the settlement voluntarily and without pressure from the other party or me.

Settlement Agreement

The Landlord and Tenant agree as follows:

1. The tenancy will end and the Tenant will vacate the rental unit no later than 1:00 p.m. on January 31, 2019.
2. The 10 Day Notice is cancelled.
3. The parties agree the Two Month Notice is valid and that the tenancy is ending pursuant to the Two Month Notice. The parties agree the Tenant is entitled to one month of rent free further to the Two Month Notice.
4. The parties agree the Tenant will not smoke in the rental unit or on the property. The parties agree this is a material term of the tenancy agreement.
5. All rights and obligations of the Landlord and Tenant under the tenancy agreement and *Act* will continue until 1:00 p.m. on January 31, 2019.

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

I explained to the parties during the hearing the compensation requirements relating to the Two Month Notice pursuant to section 51 of the *Act* including the Tenant's ability to seek compensation from the Landlord if the Landlord does not follow through with the stated purpose of the Notice.

The Landlord is granted an Order of Possession for the rental unit which is effective at 1:00 p.m. on January 31, 2019. If the Tenant fails to vacate the rental unit in accordance with the settlement agreement set out above, the Landlord must serve the Tenant with this Order. If the Tenant fails to vacate the rental unit in accordance with the Order, the Order may be enforced in the Supreme Court 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 *Act*.

Dated: November 27, 2018

Residential Tenancy Branch