



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHESTER VENTURES LIMITED
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDCT, OLC, OPC, FFT

Introduction

This hearing involved cross applications made by the parties. On November 7, 2018, the Tenant 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”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*.

On November 14, 2018, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 47 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

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

The Tenant advised that he served the Landlord with the Notice of Hearing package by registered mail on November 10, 2018 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.

The Landlord advised that he served the Tenant with the Notice of Hearing package by registered mail on November 17, 2018 and the Tenant 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 Tenant has been served with the Notice of Hearing.

The Tenant advised that he did not serve his evidence to the Landlord. As such, this evidence was not accepted or considered when rendering this decision.

The Landlord advised that he served his evidence to the Tenant by registered mail on November 29, 2018 and December 1, 2018 and he submitted registered mail receipts as

documentary evidence. The Tenant did not recall if he received these documents. However, based on the evidence before me, I am satisfied that the evidence has been deemed received five days after it was mailed. As well, I find that the Tenant has been satisfactorily served the evidence in accordance with Rule 3.15 of the Rules of Procedure. The Landlord's evidence was accepted and 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 Tenant is 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 Tenant 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

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

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 January 8, 2016 and that the Landlord purchased the property in October 2018. Rent is currently established at \$855.00 per month, due on the first day of each month. A security deposit of \$412.50 and a pet damage deposit of \$100.00 were also paid.

All parties agreed that the Notice was served to the Tenant by being posted to the door on October 25, 2018 and the Tenant confirmed that he received the Notice. The reasons the Landlord served the Notice are because the "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the

landlord.” and a “Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.” The Notice indicated that the effective end date is November 30, 2018.

The parties provided testimony with respect to the reasons 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 Tenant agreed as follows:

1. The Tenant agreed to have his vehicle, being stored in another tenant's parking spot, removed from the property permanently by **January 15, 2019**.
2. The Landlord agreed that the Tenant will continue to have possession of the rental unit, but the Tenant's vehicle must be permanently removed from the property by **January 15, 2019**.
3. The Notice of October 25, 2018 is cancelled and of no force or effect.
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 one is not satisfactorily complied with by **January 15, 2019**, the Landlord is granted an Order of Possession effective **January 15, 2019 at 1:00 PM after service of this Order** on the Tenant.

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 October 25, 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 Tenant if necessary, effective **January 15, 2019 at 1:00 PM**. This Order must be served on the Tenant. If the Tenant fails 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: December 17, 2018

Residential Tenancy Branch