



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, CNC, OLC

Introduction

On October 26, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to request more time to file to dispute a Notice, to cancel a One Month Notice to End Tenancy for Cause (the “One-Month Notice”), to cancel a 10-Day Notice for Non Payment of Rent or Utilities (the “10-Day Notice”), dated October 17, 2018, and to request an Order for the Landlord to comply with the *Act*. The matter was set for a conference call.

Both the Landlord and one of the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to more time to file to dispute a Notice?
- Should the 10-Day Notice issued on October 17, 2018, be cancelled pursuant to section 46 of the *Act*?
- Should the One-Month Notice issued pursuant to section 47 of the *Act* be cancelled?
- If not, Is the Landlord entitled to an order of possession pursuant to section 55 of the *Act*?
- Should the Landlord be Ordered to comply with the *Act*?

Background and Evidence

The tenancy agreement shows that the tenancy began on April 1, 2018, as a six-month fixed term that included a vacate (move-out) clause. Rent in the amount of \$1,600.00 is to be paid by the first day of each month. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord and Tenant were advised during this hearing that the legislation had been updated in November 2017 and that general move-out clauses were no longer enforceable under the *Act*. This arbitrator reviewed the move-out clause included in this tenancy agreement, during the hearing and advised the parties that the term did not meet the circumstances allowing under section 97 (2) (a.1) of the *Act* and was therefore not enforceable.

The Landlord became argumentative, stating that since he and the Tenants had agreed to this term in writing, the term should be enforceable. The Landlord and Tenant were advised during this hearing that pursuant to section 5 of the *Act*, any attempt to contract contrary to the *Act* is of no effect.

During the hearing, both parties expressed a desire to enter into a mutual agreement to cancel the Notice and continue the tenancy.

Section 63 of the *Act* allows for the parties to consider a settlement to their dispute during the hearing, and that any settlement agreement reached during the hearing may be recorded in the form of a decision and an order. In accordance with this, an opportunity for a settlement discussion was presented, and the parties came to an agreement on a settlement that would resolve their dispute.

During the hearing, the parties agreed to the following settlement:

1. The Tenants agree to pay the Landlord the past due rent for October, November, and December 2018, in the amount of \$2,330.00, no later than December 31, 2018.
2. If the Tenants pay the outstanding rent as per term one of this settlement agreement, the Notices to end tenancy are withdrawn, and this tenancy will continue until legally ended in accordance with the *Act*.
3. If the Tenants do not pay the outstanding rent as per term one of this settlement agreement, the Tenants agree that they will move out of the rental unit no later than January 15, 2019, at 1:00 p.m.

The above terms of the settlement agreement were reviewed with all parties at the end of the hearing, and all parties confirmed that they were entering into the settlement agreement on a voluntary basis. They also confirmed understanding of the terms of the settlement agreement as a full and final settlement of this matter.

Analysis

In order to enforce the conditions of the settlement agreement reached between the Landlord and Tenant, I grant a **Conditional Order of Possession** to the Landlord with an effective date of **January 15, 2019**; this order is only to be served on the Tenants if they do not pay the past due rent amount of \$2,330.00 by December 31, 2018.

Conclusion

The parties are ordered to comply with the terms of the settlement agreement as outlined in this decision.

I grant a Conditional Order of Possession to the Landlord to be served on the Tenants in the event that the Tenants do not comply with term one of this settlement agreement. The **Conditional Order of Possession** is effective not later than 1:00 p.m. on **January 15, 2019**. The Landlord is provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible, should they fail to comply with term one of this settlement agreement. Should the Tenants fail to comply with this Order after it is served, this Order may be filed in the Small Claims Division of the Provincial Court and 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 6, 2018

Residential Tenancy Branch