



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, PSF, FFT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant did not call into the hearing scheduled for 11:00 a.m. until approximately 11:20 a.m. Prior to the tenant joining the teleconference, the landlord provided details regarding the 1 Month Notice provided to the tenant.

As the tenant confirmed that he was handed the 1 Month Notice by the landlord on September 29, 2018, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on or about October 30, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since the tenant confirmed that they had received the landlord's written evidence, I find that the landlord's written evidence was served in accordance with section 88 of the *Act*. The tenant did not provide any written evidence for this hearing.

The landlord gave undisputed sworn testimony that another hearing for this tenancy was scheduled to be heard on January 4, 2018 at 9:30 a.m. (see RTB File number identified above). The tenant confirmed that they had been notified of this other hearing. The landlord's upcoming hearing sought an end to this tenancy based on the 1 Month Notice and the issuance of an Order of Possession and recovery of the landlord's filing fee for that application.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should any other orders be issued with respect to this tenancy? Is the tenant entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy for the basement suite in the landlord's home began on or about April 14, 2015. Monthly rent is currently set at \$1,000.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$400.00 security deposit paid when this tenancy began.

Although the landlord used an old RTB approved form for issuing the 1 Month Notice, the information on that form was sufficient to alert the tenant that they had 10 days to apply to cancel the 1 Month Notice. The 1 Month Notice also alerted the tenant as to the reason for ending this tenancy for cause (i.e., the unreasonable disturbance of other occupants on this property, in this case, the landlord and his family who live upstairs). The tenant did not apply to cancel this 1 Month Notice until October 30, 2018, far after the 10-day deadline to apply to cancel this Notice.

By failing to file an application to cancel the landlord's 1 Month Notice within 10 days of receiving it, section 47(5) of the *Act* establishes that the tenant was conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, October 31, 2018.

The parties agreed that the tenant was late in paying his November 2018 rent. Although the landlord did accept a payment, the landlord still planned to end this tenancy on the basis of the 1 Month Notice. The parties also agreed that the tenant has not paid anything to the landlord for the tenant's use and occupancy of the rental unit for December 2018.

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 engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding resolution of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on December 31, 2018, by which time the tenant will have surrendered vacant possession of the rental unit to the landlord.
2. The tenant agreed to pay the landlord \$1,000.00 in outstanding rent by 6:00 p.m. on December 14, 2018.
3. In the event that the tenant does not pay the landlord \$1,000.00 in outstanding rent by 6:00 p.m. on December 14, 2018, this tenancy ends the following day by 1:00 p.m. on December 15, 2018, by which the tenant will have surrendered vacant possession of the rental unit to the landlord.
4. The landlord and his spouse agreed to withdraw the application for dispute resolution for this tenancy scheduled for January 4, 2018.
5. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenant's application and all issues arising out of the landlord's 1 Month Notice and that they did so of their own free will and without any element of force or coercion.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the tenant does not vacate the rental premises in accordance with their agreement. The landlord is provided with this Order in the above terms and the tenant must be served with this Order in the event that the tenant does not vacate the premises by 1:00 p.m. on December 31, 2018 as set out in their agreement. I also order that the landlord may use this Order by 1:00 p.m. on December 15, 2018, in the event that the tenant does not fulfill the monetary obligation in Term 3 of this agreement by 6:00 p.m. on December 14, 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.

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlord's favour in the amount of \$1,000.00. I deliver this Order to the landlord in support of the above agreement for use only in the event that the tenant does not abide by Term 3 of the above settlement agreement.

To give effect to the terms of settlement as outlined above, the application for dispute resolution filed by the landlord for this tenancy and scheduled to be heard on January 4, 2018 is hereby withdrawn.

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 06, 2018

Residential Tenancy Branch