



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL; CNR

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 16, 2018 ("10 Day Notice"), pursuant to section 46.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 70 minutes.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

The landlord stated that he did not receive a copy of the tenant's application for dispute resolution hearing package. The tenant said that she sent it to the landlord by way of registered mail. The landlord confirmed that the tenant used the correct address. He stated that he was out of town when the mail came. He claimed that he was aware that the tenant was disputing his 10 Day Notice and he wanted to proceed with this hearing and settle the tenant's application as well as his own application. On this basis, I proceeded with the hearing and recorded the settlement between the parties.

Settlement Terms

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 and orders. 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 all issues currently under dispute at this time:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on January 31, 2019, by which time the tenant and any other occupants will have vacated the rental unit;
2. Both parties agreed that this tenancy is ending pursuant to the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated November 30, 2018 ("2 Month Notice");
3. The landlord agreed that the tenant is entitled to one month's free rent compensation pursuant to section 51 of the *Act* and the landlord's 2 Month Notice on the following term:
 - a. The tenant is not required to pay any rent to the landlord for the period from January 1 to 31, 2019;
4. The tenant agreed to pay rent of \$3,000.00 to the landlord, for the period from November 1, 2018 to December 31, 2018, by way of e-transfer or certified cheque, according to the following payment schedule:
 - a. \$500.00 will be paid by the tenant to the landlord on each of the following dates: January 25, February 1, February 8, February 15, February 22, and March 1, 2019;
5. The landlord agreed that his 10 Day Notice, dated November 16, 2018, was cancelled and of no force or effect;
6. Both parties agreed that the tenant's security deposit of \$750.00 and pet damage deposit of \$750.00 will be dealt with at the end of this tenancy in accordance with section 38 of the *Act*;
7. The landlord agreed to bear the cost of the \$100.00 filing fee paid for his application;
8. Both parties agreed that this settlement agreement constitutes a final and binding resolution of both applications at this hearing.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties affirmed at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute.

I reconfirmed with the landlord a number of times during the hearing that he wanted to settle both applications of his own free will. The landlord affirmed that he did not feel pressured or coerced to settle and that he understood I could make a decision and have a full hearing for both parties' applications if he did not want to settle.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on January 31, 2019. The tenant must be served with this Order in the event that the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on January 31, 2019. 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 and advised to both parties during the hearing, I issue a monetary Order in the landlord's favour in the amount of \$3,000.00. 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 condition #4 of the above monetary agreement. The tenant must be served with a copy of this Order as soon as possible after a failure to comply with condition #4 of the above monetary agreement. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord must bear the cost of the \$100.00 filing fee paid for his application.

The landlord's 10 Day Notice, dated November 16, 2018, is cancelled and of no force or effect.

The tenant's security deposit of \$750.00 and pet damage deposit of \$750.00 will be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

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: January 10, 2019

Residential Tenancy Branch