



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The tenants testified that they personally served the landlord with the Notice of Dispute Resolution Proceeding and served their evidence by leaving it at the landlord's door, which was confirmed received by the landlord. The landlord testified that she served the tenants with her evidence by mail courier, which was confirmed received by the tenants.

As such, I find that the documents for this hearing were served in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue - Procedural Matters

I explained to the parties that section 55 of the *Act* requires that when a tenant submits 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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

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 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 the issue currently under dispute at this time:

1. This tenancy will end at 1:00 p.m. on June 1, 2019, by which time the tenants and any other occupants will have vacated the rental unit.
2. The tenants will pay \$1,200.00 for February 2019 rent and \$1,400.00 for rent for each of the following months: March 2019; April 2019; and May 2019.
3. Both parties agreed that the terms of this settlement as outlined above constitute a final and binding resolution of the tenants' application for dispute resolution filed on December 3, 2018, and the landlord's One Month Notice dated November 28, 2018. As such, the tenants' application is dismissed in its entirety, and the landlord's One Month Notice is cancelled and is of no force or effect.
4. The parties agreed to the terms of this settlement free of any duress or coercion.

The parties are still bound by all of the rights, responsibilities, terms, conditions and any statutory compensation provisions of the tenancy agreement, the *Act*, and the associated regulations.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue to the landlord the attached Order of Possession to

be served on the tenants by the landlord **only** if the tenants fail to vacate the rental unit **by 1:00 p.m. on June 1, 2019**. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord's One Month Notice dated November 28, 2018 is cancelled and is of no force or effect. The tenants' application in its entirety is dismissed without leave to reapply.

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 14, 2019

Residential Tenancy Branch