



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, OPR, MNRL, FFL

Introduction

This hearing dealt with cross applications filed by the parties. On January 9, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”) and seeking an Emergency Repair Order pursuant to Section 62 of the *Act*.

On January 21, 2019, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession for Unpaid Rent pursuant to Section 46 of the *Act*, seeking a Monetary Order for Unpaid Rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing and K.N. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package to the Landlord by registered mail on January 12, 2019 and she provided a receipt for this (the registered mail tracking number is on the first page of this decision). K.N. advised that she did not receive this as she was not given this package from the Landlord. As the tracking history confirmed that the Landlord signed for this package, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

K.N. advised that the Landlord’s realtor served the Tenant with the Notice of Hearing package by hand on January 24, 2019 and the Tenant confirmed this. Based on the undisputed testimony and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served this package.

The Tenant advised that she served the Landlord her evidence in two separate registered mail packages on February 5, 2019; however, K.N. advised that she did not receive this as she was not given this package from the Landlord. As the tracking histories confirmed that the Landlord signed for these packages, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord received the evidence packages.

K.N. advised that the Landlord did not submit any documentary evidence into either of these files for consideration.

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 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 Application is dismissed and the Landlord has issued a notice to end tenancy that complies 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 Tenant entitled to an Emergency Repair Order?
- Is the Landlord entitled to a Monetary Order for the unpaid rent?
- 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.

Both parties agreed that the tenancy started on August 1, 2018. Rent was established at \$1,500.00 per month, due on the first of each month. A security deposit of \$750.00 and a pet damage deposit of \$50.00 were paid.

K.N. advised that the Tenant did not pay rent for January 2019. She stated that the Landlord served the Notice to the Tenant by posting it on her door on January 6, 2019 which indicated that \$1,500.00 was outstanding on January 1, 2019. The Tenant confirmed that she received this Notice on January 9, 2019. The Notice indicated that the effective end date of the Notice was January 19, 2019.

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 Notice of January 6, 2019 is cancelled and of no force or effect.
2. The Tenant and Landlord agreed that the Tenant will have possession of the rental unit, but must vacate the rental unit by **March 5, 2018 at 1:00 PM**.
3. The Landlord gave up the right to seek compensation for rent for January or February 2019, or for rent from March 1 to March 5, 2019.
4. The parties agreed that fulfilment of these conditions would amount to full and complete satisfaction of the issues with respect to this Application only.

This agreement is fully binding on the parties. If condition two is not satisfactorily complied with, the Landlord is granted an Order of Possession effective at **1:00 PM on March 5, 2019 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 10 Day Notice to End Tenancy for Unpaid Rent of January 6, 2019 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 at **1:00 PM on March 5, 2019 after service of this Order**. 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: February 19, 2019

Residential Tenancy Branch