



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL

Introduction

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

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 66; and
- cancellation of the landlord's 2 Month Notice pursuant to section 49.

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.

As the tenant confirmed that they received the 2 Month Notice posted on the tenant's door by the landlord on February 22, 2019, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that on March 26, 2019, they received a copy of the tenant's dispute resolution hearing package posted on the tenant's door, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should an extension of time be granted to the tenant to allow for the tenant's application to cancel the landlord's 2 Month Notice? Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord issued a 2 Month Notice to the tenant for landlord's use of the property. The tenant applied to cancel that Notice on March 26, 2019, and requested an extension of time for that application because they had lost the 2 Month Notice and maintained that the landlord had refused to provide the tenant with another copy of the 2 Month Notice.

Before the hearing concluded, the tenant maintained that they were advised by a representative of the Residential Tenancy Branch (the RTB) on the previous day that their written evidence pertaining chiefly to the implementation of a decision issued by another arbitrator appointed pursuant to the *Act* on March 18, 2019 would be joined to the current hearing of the tenant's application (see reference above). I advised the parties that I could not consider anything determined in the March 18, 2019 decision as that decision was final and binding. I have no authority to issue orders requiring implementation of final and binding decisions once they have been issued.

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 the tenant's current application:

1. Both parties agreed that this tenancy will end by 12:00 p.m. on May 1, 2019, by which time the tenant will have surrendered vacant possession of the rental unit to the landlord.
2. Both parties agreed that this tenancy ends on the basis of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property issued on February 22, 2019.
3. Both parties agreed that the tenant is not responsible for paying any rent for the month of April 2019, as a result of having received the landlord's 2 Month Notice.
4. Both parties agreed that they will participate in a joint move-out condition inspection of the rental unit at 12:00 p.m. on May 1, 2019.

5. The landlord agreed to provide the tenant with a copy of the joint move-out condition inspection report as soon as possible following their joint move-out condition inspection of the rental unit.
6. The landlord agreed to comply with any outstanding decisions and orders of arbitrators appointed pursuant to the *Act* with respect to this tenancy.
7. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenant's application and that they did so of their own free will and without any element of force or coercion having been applied.

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 these Orders in the above terms and the tenant must be served with an Order in the event that the tenant does not vacate the premises by 12:00 p.m. on May 1, 2019, as set out in their agreement. 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.

I order the tenant to refrain from paying monthly rent for April 2019, in order to comply with the provisions of sections 51(1) and 49 of the *Act*, following the tenant's receipt of the 2 Month Notice. However, the tenant would only have been required to pay one-half of the rent for April 2019, as per the previous decision of March 18, 2019, referenced above. In order to implement sections 3 and 6 of the above-noted settlement agreement, I issue a monetary Order in the amount of \$450.00 in order to comply with the landlord's agreement to allow the tenant to withhold monthly rent for the equivalent of one full month pursuant to sections 51(1) and 49 of the *Act*. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

To implement the terms of the settlement agreement, I order the parties to participate in a joint move-out condition inspection of the rental unit at 12:00 p.m. on May 1, 2019. I further order the landlord to provide the tenant with a copy of their report of the joint move-out condition inspection of these premises as soon as possible following that inspection.

At the hearing, the tenant also requested the issuance of an order with respect to the return of the security deposit. As discussed at the hearing, I cannot issue any such order at this time as the condition of the rental unit at the end of the tenancy cannot yet be determined and must await the outcome of the condition inspection scheduled for May 1, 2019.

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: April 30, 2019

Residential Tenancy Branch