



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, FFT

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; 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.

As the tenants confirmed that they received the landlord's 10 Day Notice of March 19, 2019 sent to them by the landlord's lawyer by Canada Post's ExpressPost service, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that they received a copy of the tenants' dispute resolution hearing package sent to the landlord's lawyer by the tenants again by Canada Post's ExpressPost service, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since the landlord confirmed that they had received copies of the tenants' written evidence, I find that the tenants' written evidence was served in accordance with section 88 of the *Act*. The only written evidence submitted to the Residential Tenancy Branch was a recent email from the landlord's legal counsel which the tenants confirmed that they had received from the landlord's legal counsel.

Preliminary Issues

In the early stages of this hearing, the tenants testified that they vacated the rental unit on April 1, 2019, in order to comply with the effective date identified on the landlord's 10 Day Notice. They said that they have not returned their keys to the rental unit as they have received conflicting information from the landlord's legal counsel and the legal counsel representing the company that has foreclosed on the landlord's mortgage.

The parties agreed that the Supreme Court of British Columbia has recently issued an order of foreclosure regarding this rental unit in a strata building on April 22, 2019. The landlord testified that although they no longer own the building that the landlord is entitled to the proceeds of any unpaid rent owing from this tenancy.

Since the tenants are no longer residing in the rental unit, they withdraw their application to cancel the 10 Day Notice. They asked for clarification as to whom they should be releasing the keys to the rental unit.

Issues(s) to be Decided

Should any orders be issued with respect to this tenancy?

Background and Evidence

The parties agreed that this tenancy began as a one-year fixed term tenancy for an initial term that ran from October 1, 2014 until September 30, 2015. The monthly rent was set at \$1,750.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$875.00 security deposit paid when this tenancy started.

Although the landlord thought that the monthly rent by the end of the tenancy was \$1,850.00, they were not clear on this point, and agreed that they had not issued any Notice of Rent Increase to the tenants. As the landlord did not dispute the tenants' assertion that the monthly rent has remained \$1,750.00 since this tenancy began, the monthly rent for the duration of this tenancy has been \$1,750.00, as declared by the tenants.

The landlord's 10 Day Notice identified \$22,200.00 in unpaid rent owing as of February 28, 2019. At the hearing, the landlord said that this figure was arrived at on the basis of the tenants having failed to pay rent of \$1,850.00 from February 1, 2018 for the

following 12 months. Since the actual monthly rent was \$1,750.00, the landlord said that the amount owing would be somewhat reduced.

The tenants entered written evidence and provided undisputed sworn testimony that they were uncertain as to whether they were required to pay monthly rent to their landlord or to the lawyer representing the holder of the mortgage who had demanded payment from them in a series of letters sent to them. Since they did not wish to be subject to parallel claims for the payment of rent, they placed their regular monthly rent payments into a trust account to be used once there was a legal determination as to who should be receiving their monthly rent payments. They said that the amount in their trust account at this time is \$22,750.00.

The tenants also provided undisputed evidence that they have not had any contact with the landlord since 2016, although until January 2018, their monthly rent payments were accepted and removed from their account by the landlord.

The tenants gave undisputed sworn testimony that they did not receive a report of the joint move-in condition inspection of the rental premises when this tenancy began. The landlord said that they have no record of a report of that move-in inspection. As such, I advised the parties that the landlord's right to apply to retain the tenants' security deposit was extinguished at the beginning of this 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 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 ends when the tenants provide their keys to the rental unit to the landlord's legal counsel, ideally by the end of the day on May 13, 2019.
2. The tenants agreed to submit a copy of their forwarding address in writing to the landlord's legal counsel by the end of the day on May 13, 2019.

3. The landlord agreed to return the tenants' security deposit within 15 days of their legal counsel's receipt of the tenants' keys to the rental unit and their forwarding address in writing.
4. As the tenants have already vacated the rental unit in accordance with the effective date identified on the landlord's 10 Day Notice, the tenants withdrew the remainder of their application for dispute resolution.
5. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenants' application and that they did so of their own free will and without any element of force or coercion having been applied.

I should also note that the parties were interested in also coming to terms with a settlement of the issues surrounding the unpaid rent owing from this tenancy. Although there is some evidence that the lawyer for the holder of the mortgage has advised the landlord's legal counsel that the unpaid rent can be paid by the tenants to the landlord, without written evidence before me with respect to this apparent agreement or whether the Courts have made any determination as to whether this rent is to be paid to the landlord or the holder of the mortgage, I was unable to issue any type of binding order with respect to the issue of unpaid rent. A decision as to who is entitled to this large sum of unpaid rent and whether the tenants are entitled to deduct anything from this amount for repairs and losses they incurred during that period of this tenancy when they could not communicate with the landlord will need to be addressed in subsequent applications for dispute resolution by the parties. **In that event, I would strongly suggest that the parties also include the mortgage holder who has foreclosed on the landlord's ownership interest in this property (and that mortgage holder's legal counsel) as a party to any subsequent monetary applications by either party.** This would ensure that closure could be established on any monetary award issued by an arbitrator appointed pursuant to the *Act*.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I order the tenants to return their keys to this rental unit to the landlord's legal counsel by the end of the day on May 13, 2019. The landlord's legal counsel can then forward these keys to the rightful owners of the rental property in accordance with any legal determinations made by courts of competent jurisdiction.

I also order the landlord to return the tenants' security deposit to the tenants in full within 15 days of their legal counsel's receipt of the keys from the tenants and upon receipt of the tenants' forwarding address in writing.

The remainder of the tenants' application is 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: May 10, 2019

Residential Tenancy Branch