



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 tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlords' One Month Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*; and
- the recovery of the filing fee for this application from the landlords 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 landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceeding package and the tenant's evidence. The tenant confirmed receipt of the landlord's evidence.

Based on the undisputed testimonies of the parties, I find that the landlord was sufficiently served with the notice of this hearing, and that the evidence of both parties was sufficiently served in accordance with 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.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the One Month Notice?

Is the tenant entitled to recover the cost of the filing fee for this application from the landlord?

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. Both parties agreed that this tenancy will end at 1:00 p.m. on October 31, 2019, by which time the tenant and any other occupants will return possession of the rental unit to the landlord.
2. Both parties agreed that the terms of this settlement as outlined above constitute a final and binding resolution of the tenant's application for dispute resolution and the landlord's 10 Day Notice dated June 28, 2019. As such, the tenant's application is dismissed in its entirety, and the landlord's notice to end tenancy is cancelled and of no force or effect.
3. The parties agreed to the terms of this settlement voluntarily.

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

The tenant's application is dismissed in its entirety, without leave to reapply.

I grant an Order of Possession to the landlord effective October 31, 2019 at 1:00 p.m. The landlord must serve this Order on the tenant as soon as possible. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: August 29, 2019

Residential Tenancy Branch