



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, FFT

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 1, 2019 ("10 Day Notice"), pursuant to section 46;
- an order requiring the landlord to complete emergency repairs to the rental unit, pursuant to section 33; and
- authorization to recover the filing fee for this application, pursuant to section 72;

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 47 minutes.

The hearing began at 11:00 a.m. with both parties present. The landlord exited the call unexpectedly at 11:13 a.m. and called back at 11:16 a.m., citing telephone problems. I did not discuss any evidence with the tenant in the absence of the landlord. The hearing ended at 11:47 a.m.

The landlord confirmed receipt of the tenant's application for dispute resolution and notice of hearing and the tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and notice of hearing and the tenant was duly served with the landlord's evidence package.

The landlord stated that he did not receive the tenant's evidence package. The tenant could not recall when he served the landlord with the evidence package and did not

confirm a Canada Post tracking number for the registered mail. I notified both parties that I could not consider the tenant's evidence package. However, both parties settled this application, so I was not required to consider the tenant's evidence package.

During the hearing, the landlord confirmed that he filed an ex-parte direct request application on September 10, 2019, for an order of possession and a monetary order for unpaid rent until September 2019, against the tenant. This process is not a participatory hearing and only considers the landlord's paper application, not any submissions or evidence from the tenant. The file number for that application appears on the front page of this decision. The landlord confirmed that he had not received a decision for that application to date. I notified the landlord that I could not deal with any monetary application for unpaid rent, as it would be dealt with in the direct request process, to which he confirmed his agreement and understanding. During the hearing, the landlord agreed that he would not enforce any order of possession against the tenant if it was obtained through this direct request process, as he agreed to a conditional order of possession in this current hearing settlement.

Settlement Terms

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 and orders. 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 all issues currently under dispute at this time:

1. The tenant agreed to pay the landlord full rent of \$1,600.00 by October 1, 2019, which the landlord agreed to accept for the period from October 1 to 31, 2019;
2. The tenant agreed to pay the landlord pro-rated rent for half a month of \$800.00 by November 1, 2019, which the landlord agreed to accept for the period from November 1 to 15, 2019;
1. Both parties agreed that this tenancy will end by 1:00 p.m. on November 15, 2019, by which time the tenant and any other occupants will have vacated the rental unit, in the event that the tenant abides by conditions 1 AND 2 of the above settlement;

3. Both parties agreed that this tenancy will end pursuant to a seven (7) day Order of Possession, if the tenant does not abide by conditions 1 OR 2 of the above settlement;
4. The landlord agreed that he would not enforce any order of possession obtained through the direct request process for the file number on the front page of this decision;
5. The landlord agreed to have a licensed, certified professional inspect the furnace at the rental unit to ensure there are no leaks and it is in proper, working order by September 17, 2019, and to fix the furnace if recommended by the professional by September 30, 2019;
6. The tenant agreed to bear the cost of the \$100.00 filing fee paid for his application;
7. The tenant agreed that this settlement agreement constitutes a final and binding resolution of his application.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties affirmed at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute.

Conclusion

To give effect to the settlement reached between the parties and as discussed with them during the hearing, I issue the attached seven (7) day Order of Possession to be used by the landlord **only** if the tenant does not abide by conditions 1 OR 2 of the above settlement. The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible after he does not comply with the above 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.

In the event that the tenant abides by conditions 1 AND 2 of the above settlement, this tenancy continues only until 1:00 p.m. on November 15, 2019.

If October and/or November 2019 rent is unpaid in the future, the landlord may apply for a separate monetary order at the RTB, as these amounts were not yet due at the time of this hearing on September 13, 2019.

The tenant must bear the cost of the \$100.00 filing fee paid for his application.

I order the landlord to have a licensed, certified professional inspect the furnace at the rental unit to ensure there are no leaks and it is in proper, working order by September 17, 2019, and to fix the furnace if recommended by the professional by September 30, 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: September 13, 2019

Residential Tenancy Branch