



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFT MNDCT

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and,
- reimbursement of the filing fee pursuant to section 72.

A hearing was held in this matter on June 3, 2019. The original hearing was adjourned and a reconvened hearing was held on September 17, 2019.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72?

Background and Evidence

The respondent testified that they entered into a contract of purchase and sale to purchase the rental unit. The landlord at that time issued a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") on December 22, 2017 with a stated moveout date of February 28, 2018. The Two Month Notice included a letter sent from the respondent to the

seller stating that the respondent wanted vacant possession so the respondent and her family could move into the rental unit.

The tenant filed an application to cancel the Two Month Notice. The file number for this application is referenced on the first page of this decision. The tenant's application was dismissed on March 1, 2018 and the landlord was issued an order for possession.

The tenant filed for judicial review of the Residential Tenancy Branch decision in the Supreme Court of British Columbia. On March 28, 2018, the parties executed a settlement agreement. The following are relevant terms of the settlement agreement:

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2. Full and Peaceable Vacancy - The Petitioner acknowledges that the Tenancy has ended effective 28 February 2018. The Petitioner agrees to vacate the Property fully and permanently by April 2018 at 5:00 p.m (PST). Despite this agreement, the Petitioner understands and agrees that the Tenancy is not reinstated, but he will be entitled to the reasonably peaceful enjoyment of his unit at the Property until 30 April 2018.
3. Renovations- The Petitioner understands that the [the Buyer], and/or her agent(s), will commence major renovations on the Property immediately. For this purpose, the Petitioner agrees to fully cooperate in granting access to the Respondents and their agents into the Property, including his unit, and otherwise not interfere in any way with the renovation process, which includes assessments and the actual renovation work. The Respondents agree to maintain the Petitioner's unit in a manner suitable for occupation.

The Respondents agree to notify the Petitioner 24 hours in advance of when the renovation process will be scheduled to begin or continue. This notice will only need to be provided again if three business days or more lapse from the last day any renovation work was performed at the Property, whether inside or outside of the Property and for any given duration.

The Respondents agree that renovation work that can reasonably be expected to generate inconvenient noise or will require access to the Petitioner's unit will be limited to the hours of 9:00 a.m to 8:00 p.m. (PST).

Without restricting the generality of the foregoing, the Respondents agree not to enter the Petitioner's unit except on either 24 hours' notice or if the Petitioner otherwise gives permission.

The Respondents agree to make reasonable efforts to minimize the inconvenience to the Petitioner of the Property renovations. The Petitioner

understands and agrees, however, that the renovations will be inconvenient and, without limiting the generality of clauses 16 and 17, agrees not to bring any claims, petitions or proceedings against the Respondents arising from reasonable inconveniences caused by the renovations.

4. Indemnity Schedule - In consideration of the full and peaceable vacancy as per clause 2, the Respondents agree:
- i. to pay the Petitioner \$1,000 to defray any moving costs incurred by the Petitioner in complying with clause 2 of this agreement;
 - ii. to waive the Petitioner's rent for April 2018;
 - iii. to limit the payment of the Utilities for April 2018 to \$50, subject to clause 5; and
 - iv. to waive recovery of costs in the Petition.

. . .

16. Full Release - The Petitioner and the Respondents hereby irrevocably and unconditionally release each other and their respective directors, officers, employees, agents, representatives, successors, and assigns of and from any and all actions, causes of action, suits, proceedings, petitions, applications, claims, counterclaims, setoffs, debts, liabilities, accounts, agreements, contracts, obligations, judgments, damages, covenants, rights to indemnification, rights to reimbursement, demands and all other claims whatsoever whether known or unknown or suspected or unsuspected, by reason of any event, cause, matter, or thing occurring or existing up to and including the date of this agreement regarding the Agreement, the Tenancy, and the Property, including its occupancy, or its alienation whether partially or fully, temporary or permanently except regarding the obligations under this agreement, or under any agreement or instrument executed and delivered in writing pursuant to this agreement.

17. No Claim for Contribution or Indemnity - The Parties agree that they will not make any claim or take any proceedings, mediations, or arbitrations, regarding any matter released in clause 16 of this agreement against either Party or against any third party, whether person or corporation, that might seek to make a claim for contribution or indemnity against either Party (individually or collectively) or any other parties released in clause 16 of this agreement. The Parties agree to indemnify and save harmless each other Party against and from any and all actions, damages, claims, cross-claims, or demands released in clause 16 of this agreement that may be hereafter brought against either of the Respondents regarding any claims made by the Petitioner against any third party in relation to the Petition or the Property.

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Pursuant to the settlement agreement, the respondent paid the tenant \$1,000.00 for moving expenses.

The tenant complained that he was subjected to loud construction noise after the settlement agreement was signed. The respondent testified that the only work performed in the rental unit while the tenant occupied it was painting which did not cause significant noise. The respondent provided an affidavit from the painting contractor which stated that the work did not cause significant noise.

The tenant moved out of the rental unit on April 29, 2018. The tenant testified that he difficulty finding a suitable accommodation after he vacated the rental unit. The tenant also testified that lost many valuable personal possessions which he was unable to store or move after the tenancy ended.

The tenant testified that the respondents did not move into the rental unit. The tenant presented a witness in the original hearing who testified that renters were living in the property.

The respondent testified that they intended to move into the rental unit. The respondent testified that they intended to renovate the rental unit and then move in. However, they testified that their foreign funds became severely devalued and they could not afford to move into the property. The respondents testified that they rented the property out to new tenants because they financially had to.

The tenant seeks a monetary order for the following compensation:

- Rent paid in March 2019: \$770.00;
- Compensation under section 51 of the Act for ending the tenancy: \$1,540.00
- Moving expenses: \$1,200.00;
- Compensation for loss of personal property: \$7,500.00; and,
- Compensation for physical and mental harm and loss of opportunity: \$25,000.00.

Analysis

I find that the parties have entered a settlement agreement regarding all issues in dispute in this matter. I find the parties executed this settlement agreement and the parties therein promised to mutually exchange consideration in regards to the agreement. I find that terms of the agreement are directed to an ongoing dispute between the parties regarding the possession of the rental unit and that it was the intention of the parties to resolve this dispute with the settlement agreement.

Furthermore, the terms of the settlement agreement specifically states at paragraph 16 that the parties "...hereby irrevocably and unconditionally release each other ... from any and all actions, causes of action, suits, proceedings, petitions, applications, claims." I find that this application for dispute resolution is within the scope of this release.

For the forgoing reasons, I find that that tenant's right to pursue this entire application herein has been released in the settlement agreement and can no longer be asserted. Accordingly, I dismiss the tenant's application for monetary compensation.

Since the tenant has not prevailed in this matter, I dismiss the tenant's application for reimbursement of the filing fee pursuant to section 71(1) of the *Act*.

Conclusion

I hereby dismiss the tenant's application.

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 18, 2019

Residential Tenancy Branch