



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROOKSWOOD INVESTORS LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes TENANT: CNR FFT
 LANDLORD: OPRM-DR FFL

Introduction

This hearing dealt with applications from both the tenant and the landlord pursuant to the *Residential Tenancy Act* (the *Act*).

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) pursuant to section 46 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

The landlord applied for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*;
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the tenant 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. The landlord's agent attended on behalf of the corporate landlord and is herein referred to as "the landlord". The tenant attended with occupant R.N. as assistant.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceeding package. The landlord testified that the landlord's Notice of Dispute Resolution Proceeding package had been sent to the tenant by Canada Post registered mail, and submitted a Canada Post registered mail receipt with tracking number into evidence, which I have

noted on the cover sheet of this decision. The tenant testified that she received the Canada Post registered mail notice card pertaining to the landlord's service of the Notice of Dispute Resolution Proceeding package, however, the tenant stated that the package had already been returned to sender by the time she retrieved the notice card from the mail box.

Residential Tenancy Policy Guideline #12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Act*, documents served this way are deemed served five days later; accordingly, I find the tenant was duly served with the landlord's Notice of Dispute Resolution Proceeding package by June 3, 2019.

Based on the testimonies of the parties, I find that both parties were sufficiently served for the purposes of this hearing in accordance with the *Act*.

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 voluntarily agreed to the following final and binding settlement of the issues currently under dispute at this time:

1. This tenancy will end at 5:00 p.m. on November 1, 2019, by which time the tenant and any other occupants will return vacant possession of the rental unit to the landlord and remove all vehicles on the rental property. Both parties will participate in an inspection of the rental property at this time to confirm that this term has been fulfilled. The parties will confirm in writing, signed by both parties, whether or not this condition has been fulfilled, and the landlord is required to

document the condition of the rental property at the end of the tenancy through photographic evidence.

2. If the tenant fails to remove all vehicles from the rental property as required by Term #1 of this settlement, the landlord will retain the \$600.00 security deposit as compensation for the removal costs. If the tenant fulfills Term #1 of this settlement, the landlord will apply the \$600.00 security deposit towards the amount of rental arrears owed by the tenants to reduce the tenant's payment from \$5,600.00 to \$5,000.00, as accounted for in the payment schedule provided in Term #3.
3. Subject to Term #2 of this settlement, the tenant agreed to pay the landlord \$5,600.00 in full satisfaction of rental arrears owed to the landlord, by no later than December 20, 2020, through 12 monthly payments beginning January 20, 2020, as follows:
 - January 20, 2020 = \$467.00
 - February 20, 2020 = \$467.00
 - March 20, 2020 = \$467.00
 - April 20, 2020 = \$467.00
 - May 20, 2020 = \$467.00
 - June 20, 2020 = \$467.00
 - July 20, 2020 = \$467.00
 - August 20, 2020 = \$467.00
 - September 20, 2020 = \$467.00
 - October 20, 2020 = \$467.00
 - November 20, 2020 = \$330.00
 - December 20, 2020 = \$600.00 [Tenant not required to make this payment if Term #1 of this settlement fulfilled by tenant]
4. The tenant will make cash payments to the landlord delivered to the landlord's address for service provided on the cover sheet of this settlement. The parties are at liberty to make other payment arrangements if mutually agreed upon. The parties are directed to keep documentation of payments made and received, for future reference in the event enforcement of the settlement is required.
5. The landlord has been provided with the monetary orders pertaining to payments from January to November 2020, and a separate monetary order for \$600.00 for December 2020 to be enforced only if the tenant fails to fulfill Term #1 of this settlement.
6. 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; the landlord's 10 Day Notice to End Tenancy for Unpaid Rent; and the landlord's application for dispute resolution. As such, the tenant's application is dismissed

in its entirety; the landlord's notice to end tenancy is cancelled and of no force or effect; and the landlords' application is dismissed in its entirety.

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 landlord's 10 Day Notice is cancelled and of no force or effect.

Both the tenant's and the landlord's Applications for Dispute Resolution are dismissed in their entirety as these disputes have been settled by way of this settlement agreement.

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the following Orders to the landlord, **which the landlord must serve on the tenant as soon as possible**:

- 1) The attached Order of Possession effective November 1, 2019. 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.
- 2) The attached Monetary Orders totaling \$5,600.00 in full satisfaction of rental arrears owed by the tenant. Should the tenant fail to abide by the payment terms set out in this settlement, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. If the tenant only makes a partial payment and not the total amount, this partial payment must be accounted for if the landlord is enforcing the Monetary Order.

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: October 11, 2019

Residential Tenancy Branch