



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP

Introduction

On September 3, 2019, the Tenants applied for a Dispute Resolution proceeding seeking to cancel two 10 Day Notices to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”) and seeking to repair order pursuant to Section 32 of the *Act*.

Both the Tenant and the Landlord attended the hearing. All parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord with the Notice of Hearing and evidence package by hand on September 6, 2019 and the Landlord confirmed that he received this package. Based on the undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served this package.

The Landlord advised that he did not submit any evidence for consideration on this file.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Tenants’ Application with respect to the Notices, and the other claim was dismissed with leave to reapply. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

I note 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 Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlords' Notices cancelled?
- If the Tenants are unsuccessful in cancelling the Notices, are the Landlords entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 15, 2018 and that rent was established at \$3,000.00 per month, due on the first day of each month. A security deposit of \$1,500.00 was also paid.

As well, all parties agreed that one Notice for each Tenant was served to Tenant D.T. by hand on August 30, 2019, which indicated that \$6,000.00 was outstanding on August 1, 2019. All parties confirmed that this amount was in arrears, comprising of July and August 2019 rent. The Tenant acknowledged that they did not pay this rent and they did not have a valid reason under the *Act* to withhold the rent. It was noted on the Notice that the effective end date of the tenancy was September 10, 2019.

Settlement Agreement

The parties raised the possibility of settlement pursuant to Section 63(1) of the *Act* which allows an Arbitrator to assist the parties to settle the dispute. I explained to the parties that settlement discussions are voluntary, that if they chose not to discuss settlement I would make a final and binding decision on the matter, and that if they chose to discuss settlement and did not come to an agreement, that I would make a final and binding decision on the matter.

I advised the parties that if they did come to an agreement, I would write out this agreement in my written decision and make any necessary orders. I also explained that the written decision would become a final and legally binding agreement. The parties did not have questions about discussing a settlement when asked.

The parties engaged in a discussion on what would be an amenable settlement for both parties. The Landlord and the Tenant agreed as follows:

1. The Tenants will pay July, August, September, and October 2019 rent on October 7, 2019 in full (**\$12,000.00**).
2. As of November 1, 2019, the rent must be paid in full on the first of each month, as per the tenancy agreement.
3. The Tenants will be responsible for paying 2/3 of the utilities, effective November 1, 2019.
4. The Notices of August 30, 2019 are cancelled and of no force or effect.

This agreement is fully binding on the parties and is in full and final satisfaction of this dispute.

If condition 1 is not satisfactorily complied with, the Landlords are granted an Order of Possession that is effective **two days after service of this Order** on the Tenants.

In addition, if condition 1 is not satisfactorily complied with, the Landlords are granted a Monetary Order in the amount of **\$12,000.00** for the rent arrears of July, August, September, and October 2019 rent arrears. This Order is enforceable only if the Tenants fail to comply with the payment requirements set forth in the settlement above.

This settlement agreement was reached in accordance with Section 63 of the *Act*. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the binding nature of this full and final settlement of these matters.

The parties also discussed a rent increase; however, the Landlord was advised that he must comply with the provisions in the *Act* and accompanying *Regulations* should he want to increase the rent.

Conclusion

The parties reached a full and final settlement agreement in resolution of their disputes. I have recorded the terms of settlement in this decision and in recognition of the settlement agreement, I hereby order that the 10 Day Notices to End Tenancy for Unpaid Rent of August 30, 2019 to be cancelled and of no force or effect.

In addition, in support of the settlement described above and with agreement of both parties, I grant the Landlords a conditional Order of Possession, to serve and enforce upon the Tenants if necessary, effective **two days after service**. This Order must be served on the Tenants. If the Tenants fail to comply with this Order, the Landlords may file the Order with the Supreme Court of British Columbia and be enforced as an Order of that Court.

In addition, I provide the Landlords with a conditional Monetary Order in the amount of **\$12,000.00** to serve and enforce upon the Tenants, if necessary. The Order must be served on the Tenants by the Landlords. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 1, 2019

Residential Tenancy Branch