



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, PSF, FFT

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that they received the 10 Day Notice which the landlord posted on their door on August 22, 2019, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that the tenant handed him a copy of the tenant's dispute resolution hearing package on August 29, 2019, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since the tenant confirmed that they had received a copy of the landlord's written evidence in advance of this hearing and within the time frame established in the Residential Tenancy Branch's (the RTB's) Rules of Procedure, I find that the landlord's written evidence was served in accordance with section 88 of the *Act*.

The tenant provided both the RTB and the landlord with a copy of their written and photographic evidence only three days before this hearing. Since this information was provided well after the time limit for doing so, I have not considered the tenant's written and photographic evidence.

The parties agreed that since the landlord issued the August 22, 2019, that was the subject of the current application by the tenant, the landlord has issued two subsequent 10 Day Notices. One of these was issued on August 29, 2019, for rent that did not actually become due until September 1, 2019. The other 10 Day Notice was issued on or about October 2, 2019, for rent that became owing as of October 1, 2019. The tenant confirmed that they had not applied to cancel the 10 Day Notice issued on October 2, 2019.

At the hearing, the tenant said that they filed another application for dispute resolution, which was to be heard on December 16, 2019 (see above). Although that hearing seeks a monetary award of \$34,840.00, the tenant also believed that the December 26, 2019 was to consider their application to cancel a notice to end tenancy for unpaid rent issued by the landlord.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should any other orders be issued with respect to this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The parties agreed that the tenant moved into this two level rental unit in November 2014. Although the parties have a written Residential Tenancy Agreement for this month-to-month tenancy, neither party supplied a copy of that Agreement as part of their evidence. For that matter, neither party provided copies of any of the Notices of Tenancy issued to the tenant over the past three months, including that issued on August 22, 2019.

Monthly rent is set at \$1,350.00, which was initially supposed to have been paid in advance on the first of each month. During the course of this tenancy, the parties agreed that the tenant would pay their rent for the following month on the last Wednesday of each month, to co-ordinate with the income the tenant receives each month. The landlord is not holding any security deposit for this tenancy.

Each of the landlord's last three 10 Day Notices identified \$1,350.00 as owing when monthly rent became due. The landlord provided undisputed written evidence and

sworn testimony that \$4,050.00 in rent remains outstanding as of the date of this hearing.

The tenant's application noted that there have been ongoing repairs and renovations in this rental unit, for which the tenant has not been properly compensated.

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 engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding resolution of their dispute:

1. The tenant agreed to reside elsewhere as of November 1, 2019.
2. Both parties agreed that this tenancy will end by 1:00 p.m. on November 15, 2019, by which time the tenant will have surrendered vacant possession of the rental unit to the landlord.
3. By November 1, 2019, the tenant agreed to have removed all of their possessions from the upper level of this rental unit and all areas of the lower level of this rental unit with the exception of the northwest room closest to the shed in the lower level of this rental unit, where all of the tenant's remaining possessions will be stored during the first two weeks of November 2019. The tenant agreed to remove all of their possessions from the northwest room closest to the shed by at least 1:00 p.m. on November 15, 2019.
4. The tenant agreed to provide the landlord with all keys to the rental unit no later than 1:00 p.m. on November 15, 2019, and if possible earlier if the tenant is able to remove all of their belongings from the rental unit before that time and date.
5. The tenant agreed to withdraw their claim for a monetary award currently scheduled to be heard on December 16, 2019.
6. The landlord agreed to not pursue any monetary claim against the tenant for unpaid rent arising out of this tenancy.
7. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenant's application, the tenant's application currently scheduled to be heard on December 16, 2019, and all issues currently in dispute arising out of this tenancy and that they did so of their own free will and without any element of force or coercion having been applied.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the tenant does not vacate the rental premises in accordance with their agreement by 1:00 p.m. on November 15, 2019. The landlord is provided with these Orders in the above terms and the tenant must be served with an Order in the event that the tenant does not vacate the premises by the time and date set out in their 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.

To implement the settlement agreement between the parties, I also order the tenant to remove their belongings from all parts of the rental unit by November 1, 2019, with the exception of the northwest room closest to the shed in the lower level of this rental unit. The tenant is allowed to move all of the possessions they wish to keep in the rental unit after November 1, 2019 to the northwest room closest to the shed in the lower level of this rental unit. I order the tenant to remove all of these remaining possessions from that room and the landlord's property by at least 1:00 p.m. on November 15, 2019.

I order the tenant's application scheduled to be heard on December 16, 2019 (see above) withdrawn.

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 25, 2019

Residential Tenancy Branch