



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, RP, FFT

Introduction

I was designated to hear this matter pursuant to section 58 of the *Residential Tenancy Act* (the *Act*). This hearing dealt with the tenant's application for:

- cancellation of the landlord's 4 Month Notice to End Tenancy for Landlord's Use of Property (the 4 Month Notice) pursuant to section 49;
- an order to the landlord to make repairs to the rental unit pursuant to section 32; 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 tenants confirmed that they were handed the 4 Month Notice by the landlord on August 30, 2019, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. The landlord testified that they received a copy of the tenants' dispute resolution hearing package posted on the landlord's door on September 30, 2019. Although this is not a proper way to notify a Respondent of this type of application for dispute resolution, in accordance with section 71 of the *Act*, I accept that this package was duly served to the landlord in a way that enabled the landlord to know the case against them and participate in this hearing.

As the tenants confirmed that they received copies of the landlord's written evidence in advance of this hearing, I find that the landlord's written evidence was duly served to the tenants in accordance with section 89 of the *Act*. Since both parties confirmed that they

had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Tenant CC (the tenant) testified that they sent a copy of their written evidence to the landlord by registered mail on November 18, 2019. The tenant provided the Canada Post Tracking Number to confirm this registered mailing. The tenant maintained that the landlord refused to accept this registered mailing. Although the landlord denied having received or refused the tenants' registered mailing, the landlord confirmed that they had exchanged numerous text messages with the tenants with respect to this tenancy. As the landlord was aware of the text messages, which comprised virtually all of the tenants' written evidence, I find that the landlord was deemed served with the tenants' written evidence in accordance with sections 88 and 90 of the *Act*, on the fifth day after their registered mailing.

Although the tenants referred to spoiled food in their written evidence, they did not include this portion of their dispute within the information contained in their dispute as provided to the landlord in their application for dispute resolution. As such, I advised the parties that I could only consider the three items listed above as part of their application.

Issues(s) to be Decided

Should the landlord's 4 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should the landlord be required to undertake any repairs to this rental unit? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenants gave undisputed sworn testimony that they entered into a month-to-month written tenancy agreement with the former owner of this property that commenced on October 1, 2018. Monthly rent is set at \$1,300.00, payable in advance on the first of each month. The landlord purchased this property early in 2019. The landlord continues to hold the tenants' \$650.00 security deposit.

The landlord's 4 Month Notice sought to end this tenancy in order to demolish the rental unit. The landlord applied to the municipality for a demolition permit on July 24, 2019. Although the landlord eventually received an approved permit to demolish the rental

dwelling on October 9, 2019, the tenants noted that this required municipal permit was not received until well after the landlord issued the 4 Month Notice.

The parties agreed that the tenants have paid their December 2019 rent in full.

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. Both parties agreed that this tenancy will end by 1:00 p.m. on January 15, 2020, by which time the tenant will have surrendered vacant possession of the rental unit to the landlord.
2. Both parties agreed that the tenants will pay no further rent to the landlord for this tenancy.
3. The landlord agreed to pay the tenants a total of \$2,850.00 by e-transfer by January 1, 2020. The parties agreed that this payment was to be comprised of an allowance of \$1,300.00 for the final month's rent for these premises, \$500.00 for moving expenses, \$300.00 for the tenant's spoiled food, \$100.00 for the tenants' recovery of their filing fee for this application, and \$650.00 for the return of the tenants' security deposit.
4. Both parties agreed that this tenancy ends on the basis of the 4 Month Notice issued by the landlord on August 30, 2019.
5. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenants' application 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 January 15, 2020. The landlord is provided with these Orders in the above terms and

the tenant(s) must be served with an Order in the event that the tenants do not vacate the premises by the time and date set out in their agreement. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In order to implement the above settlement reached between the parties, I issue a monetary Order in the tenants' favour in the amount of \$2,850.00. I deliver this Order to the tenants in support of the above agreement for use in the event that the landlord does not abide by the terms of the above settlement. The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible after any failure to abide by the terms of this portion of their agreement. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

To give legal effect to this settlement agreement, I order that the security deposit is to be returned to the tenants as part of the monetary terms of this settlement agreement as outlined in Clause 3 of this agreement.

I also order that the tenants are not required to pay any rent for the remainder of this tenancy.

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: December 09, 2019

Residential Tenancy Branch