



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **DRI, OLC, FFT, CNR (tenant);
FFL, MNRL-S; OPR-DR, OPRM-DR, FFL (landlord)**

Introduction

This joined hearing dealt with three applications. The first was an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order to dispute a rental increase pursuant to section 41;
- Cancellation of a Notice of Rent Increase pursuant to section 43;
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten Day Notice”) pursuant to section 46;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The hearing also dealt with two applications by the landlord under the *Residential Tenancy Act* (the *Act*), firstly, for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent (“Ten-Day Notice”) pursuant to sections 46 and 55;

- Authorization to recover the filing fee for this application pursuant to section 72.

The hearing dealt with a second application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by teleconference. Both parties attended the hearing and provided affirmed testimony. The hearing process was explained, and both parties had to opportunity to ask questions. Each party had the opportunity to make submissions, present documentary evidence, call witnesses and cross examine the other party.

Each party acknowledged receipt of the other party's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find each party served the other in accordance with section 89 of the *Act*.

Preliminary Issue 1

At the commencement of the hearing, I advised the parties that Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The tenant's application included unrelated claims in addition to the tenant's application to dispute the landlord's Notice and the landlord's application for an order of possession. I find that the tenant's primary application pertains to disputing a notice to end tenancy and the landlord's primary application pertains to obtaining an order of possession; therefore, I find that the additional claims are not related to whether the tenancy continues.

Thus, all the parties' claims, except for the tenant's application to dispute the landlord's

Notice and the landlord's application for an order of possession, are dismissed. I make no findings with respect to these claims. I grant each party liberty to reapply for these dismissed claims subject to any applicable limits set out in the *Act*, should the tenancy continue.

Preliminary Issue 2

I informed the parties that in the event I dismissed the tenant's application to cancel the Notice issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an order of possession in favour of the landlord. Section 55 states as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Issues

Is the tenant entitled to an order dismissing the landlord's Ten-Day Notice?

Is the landlord entitled to an order of possession?

Is either party entitled to reimbursement of the filing fee?

Settlement

The hearing lasted 105 minutes. Before the conclusion of this hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise, and achieved a resolution of their dispute.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

Given the agreement reached between the parties during the proceedings, I find that the parties have settled their dispute and the following records this settlement as a

Decision:

The parties agreed as follows:

1. The tenancy between the parties will end at 1:00 PM on December 31, 2020, by which time the tenant and any other occupants will return vacant possession of the rental unit to the landlord;
2. The monthly rent for the unit is agreed to be \$2,000.00 payable on the first of the month commencing **March 1, 2020** and continuing the first of each month until the tenancy is ended in accordance with the Act and this Decision;
3. The tenant shall pay outstanding rent due for the months of March, April and May 2020 in the \$900.00 for each month being \$2,700.00 in total on or before 5:00 pm on May 15, 2020;
4. The parties acknowledged that the kitchen cabinets in the downstairs unit were damaged by water and have been removed by the tenant;
5. The parties acknowledged that the tenant has carried out repairs and renovations to the unit which shall remain in the unit when the tenant vacates;
6. The Ten-Day Notice issued by the landlord and being the subject of this proceeding is withdrawn by the landlord and is of no force or effect;
7. The issue of the return of the security deposit shall be dealt with by the parties at the end of the tenancy;
8. The tenancy shall continue until the tenancy is ended in accordance with this agreement, the tenancy agreement and the Act;
9. All other matters between the parties not resolved in this Decision are dismissed with leave to reapply.

Both parties testified that they understood and agreed that the above terms are final, binding, and enforceable, and settle all aspects of this application.

The parties are still bound by all the rights, responsibilities, terms, conditions and any statutory compensation provisions of the tenancy agreement, the *Act*, and the associated regulations.

Based on the above, I find that all matters between these parties raised in this application are resolved pursuant to the above agreed terms.

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the following orders:

1. I issue to the landlord an Order of Possession dated December 31, 2020 to be served on the tenant ONLY if the tenant fails to abide by the terms set out in this settlement agreement. Should the landlord be required to serve this Order on the tenant and should the tenant or anyone occupying the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.
2. I issue to the landlord a Monetary Order of \$2,700.00 dated May 15, 2020 to be served on the tenant ONLY if the tenant fails to abide by the terms set out in this settlement agreement.

Conclusion

Further to the terms of the above settlement and Decision:

1. I issue to the landlord an Order of Possession dated December 31, 2020 to be served on the tenant ONLY if the tenant fails to abide by the terms set out in this settlement agreement. Should the landlord be required to serve this Order on the tenant and should the tenant or anyone occupying the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

2. I issue to the landlord a Monetary Order of \$2,700.00 dated May 15, 2020 to be served on the tenant ONLY if the tenant fails to abide by the terms set out in this settlement agreement.

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: May 04, 2020

Residential Tenancy Branch