



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Phoenix Homes
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FFT, RR, RP, OLC
MNRL-S, OPR, MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice);
- An order for the Landlord to comply with the Act, regulation or tenancy agreement;
- A rent reduction for repairs, services or facilities agreed upon but not provided;
- Repairs to the unit, site or property; and
- Recovery of the filing fee.

I note that section 55 of the Act requires that when a tenant submits an Application 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 is compliant with section 52 of the Act.

This hearing also dealt with a Cross-Application for Dispute Resolution (the Cross-Application) that was filed by the Landlord under the Act, seeking:

- An Order of Possession based on a 10 Day Notice;
- Outstanding rent;
- Compensation for monetary loss or other money owed;
- Authorization to withhold the security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant and two agents for the Landlord (the Agents), S.M. and AP, all of whom

provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary Matters

The Tenant withdrew their Applications for an order for the Landlord to comply with the Act, regulation or tenancy agreement, a rent reduction for repairs, services or facilities agreed upon but not provided and repairs to the unit, site or property.

Although the Agents acknowledged receipt of the Tenant's Application and Notice of Hearing and raised no concerns regarding service or timelines, the Tenant disputed receipt of the Landlord's Application and Notice of Hearing. In any event, the opportunity for settlement was discussed with the parties during the hearing and the parties chose to settle both Applications as set out below. The parties were advised on several occasions during the hearing that there is no obligation to resolve the dispute through settlement, but that pursuant to section 63 of the Act, I could assist the parties to reach an agreement, which would be documented in my Decision and supporting Orders.

Settlement

During the hearing, the parties mutually agreed to settle this matter as follows:

1. The parties agree that rent in the amount of \$1,400.00 is due on the first day of each month under the tenancy agreement.
2. The parties agree that the 10 Day Notice is cancelled/withdrawn and that the tenancy may continue until February 28, 2021, at 1:00 P.M., if the following conditions are met:
 - a. On or before 11:59 P.M. on November 15, 2020, the Tenant pays \$1,400.00 in rent for November 2020, to the Landlord or the Landlord's agent;
 - b. The Tenant pays rent on time and in full for any subsequent months up to and including February 2021.
3. If the Tenant abides by the above noted terms, the parties agree that the Tenancy may continue until February 28, 2021, at 1:00 P.M. at which time the Tenant agrees to vacate the rental unit.

4. The parties agree that if the Tenant abides by the conditions set out in section 2 of this agreement, that all rent owed for the period prior to November 1, 2020, will be waived/forgiven.
5. The Tenant understands that failure to abide by any of the terms set out under section 1 of this mutual settlement agreement will constitute a breach of a material term of the tenancy agreement and result in the termination of the tenancy two days after service of the attached Order of Possession. The Tenant is also advised that the Landlord will be entitled to seek recovery of all outstanding rent owed, including rent owed prior to November 1, 2020.
6. The parties agree that the Tenant may end the tenancy earlier than February 28, 2021, upon 10 days written notice, provided the written notice complies with section 52 of the Act. The parties agree that pro-rated rent will be charged in this circumstance and that either pro-rated rent for the balance of the term of the tenancy up-to and including the date covered by the notice to end tenancy will be charged on the first day of the month following service of the notice to end tenancy by the Tenant, if the notice is given prior to the first, or that any rent already paid by the Tenant for the period after the effective date of the notice to end tenancy will be returned, if the notice to end tenancy is served by the Tenant after the first and rent has already been paid for that month.
7. The rights and responsibilities of the parties under the Act, regulation, and tenancy agreement continue until the tenancy is ended in accordance with this agreement.

Conclusion

In support of the settlement described above, and with the agreement of the parties, I grant the Landlord two orders of possession as follows:

- An Order of Possession effective at 1:00 P.M. on February 28, 2021; and
- A Conditional Order of Possession effective two days after service on the Tenant.

The Landlord is provided with the Order of Possession effective February 28, 2021, in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is also provided with the Conditional Order of Possession effective two days after service on the Tenant. This Order **must** be read in conjunction with the related mutual settlement agreement and the Landlord **must not** serve or seek to enforce this Order on the Tenant **unless** the Tenant fails to meet the conditions set out

under section 2 of the mutual settlement agreement. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court. If the Tenant complies with section 2 of this agreement, the two day Order of Possession is deemed to be of no force or effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 9, 2020

Residential Tenancy Branch