



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax Crest Realty and [tenant
name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing was convened in response to an application by the Tenant for an order cancelling a notice to end tenancy pursuant to section 46 of the *Residential Tenancy Act* (the “Act”). The Parties were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Landlord entitled to an order of possession and unpaid rent?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on March 28, 2021. Rent of \$1,150.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$550.00 as a security deposit. The Tenant failed to pay rent for May 2021 and on May 5, 2021 the Landlord served the Tenant with a 10-day notice to end tenancy for unpaid rent dated May 5, 2021 (the “Notice”). The Notice carries an effective date of May 17, 2021 and sets out unpaid rent of \$1,150.00 due May 1, 2021. The Tenant has not moved out of the unit and has not paid any rents for May to September 2021 inclusive.

The Parties agree that the tenancy will end at 1:00 p.m. on September 30, 2021.

Analysis

Section 63(2) of the Act provides that if the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or order. Given the mutual agreement of the Parties on the end of the tenancy I find that the Parties have settled the dispute over the Notice. I dismiss the Tenant's claim to cancel the Notice and in effect the application is dismissed. To give effect to this agreement I grant the Landlord an order of possession on the agreed terms.

Section 55(1.1) of the Act provides that if a notice to end tenancy complies in form and content and if the Tenant's application to dispute the notice is dismissed, the director must grant an order requiring the payment of the unpaid rent. As the Tenant's application has been dismissed, as the Notice, a copy of which was provided as evidence, complies in form and content and based on the undisputed evidence of unpaid rent I find that the Landlord is entitled to a monetary order for **\$5,750.00** (\$1,150 x 5 months).

Section 72(2)(b) of the Act provides that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant. Deducting the security deposit of **\$550.00** plus zero interest from the Landlord's entitlement of **\$5,750.00** leaves **\$5,200.00** owed to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord effective 1:00 p.m. on September 30, 2021. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order that the Landlord retain the **deposit** and interest of \$550.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$5,200.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: September 16, 2021

Residential Tenancy Branch