



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WOODBINE HOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On September 21, 2021, the Tenant made an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”).

The Tenant attended the hearing, with S.M. attending as an advocate for the Tenant. L.L. attended the hearing as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, the parties were advised to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were informed to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

S.M. advised that the Landlord was served the Notice of Hearing package by registered mail on or around September 28, 2021 and L.L. confirmed that she received this package. Based on this undisputed testimony, I am satisfied that the Landlord was duly served the Tenant’s Notice of Hearing package. The Tenant only submitted a copy of the Notice as documentary evidence.

L.L. advised that she did not submit any documentary evidence for consideration on this file. However, she acknowledged that she had, in her possession, a copy of the Notice that the Tenant submitted as evidence.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution 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 the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 1, 2017, that rent was currently established at \$500.00 per month, and that it was due on the first day of each month. A security deposit of \$250.00 was also paid. A copy of the signed tenancy agreement was not submitted as documentary evidence; however, both parties considered this a tenancy under the jurisdiction of the *Act*.

The parties turned their minds to reaching a full and final settlement agreement. The parties were able to reach an agreement and I have recorded the terms of agreement by way of this Decision and the conditional Order of Possession that accompanies it.

Settlement Agreement

I raised the possibility of settlement pursuant to Section 63(1) of the *Act* which allows an Arbitrator to assist the parties to settle the dispute. I explained to the parties that settlement discussions are voluntary, that if they chose not to discuss settlement I would

make a final and binding Decision on the matter, and that if they chose to discuss settlement and did not come to an agreement, that I would make a final and binding Decision on the matter.

I advised the parties that if they did come to an agreement, I would write out this agreement in my written Decision and make any necessary Orders. I also explained that the written Decision would become a final and legally binding agreement. The parties did not have questions about discussing a settlement when asked.

The parties reached the following full and final settlement agreement during the hearing:

1. The Tenant must remove all aquariums, including the water and fish, from the rental unit by March 31, 2022.
2. The Tenant must refrain from engaging in any construction or repairs in the rental unit or in and around the building immediately.
3. The Notice of September 15, 2021 will be cancelled and of no force or effect.
4. The parties agreed that fulfilment of these conditions would amount to full and complete satisfaction of this dispute.

This settlement agreement was reached in accordance with Section 63 of the *Act*. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that they understood the binding nature of this full and final settlement of these disputes.

Should the Tenant not comply with either of conditions one or two of this settlement, the Landlord is provided with a conditional Order of Possession effective at **1:00 PM on March 31, 2022** after service of this Order on the Tenant. These conditions apply until the end of tenancy. The Landlord is cautioned that if the Tenant proceeds to behave contrary to the aforementioned conditions after March 31, 2022, the Order of Possession may still be enforceable. However, should a significant amount of time pass, the Supreme Court may elect not to enforce that Order of Possession.

As an aside, the Tenant is cautioned that, in the future, engaging in actions deemed inappropriate or detrimental to the tenancy could likely support the formation of, and the justification for, ending the tenancy with another One Month Notice to End Tenancy for Cause.

Conclusion

The parties reached a full and final settlement agreement in resolution of their disputes. I have recorded the terms of settlement in this Decision and in recognition of the settlement agreement, I hereby Order that the One Month Notice to End Tenancy for Cause of September 15, 2021 is cancelled and of no force or effect.

Furthermore, should the Tenant breach either of conditions one or two of this settlement agreement, the Landlord is provided with a formal copy of a conditional Order of Possession effective at **1:00 PM on March 31, 2022 after service of this Order** on the Tenant. Should the Tenant or any occupant on 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.

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: February 3, 2022

Residential Tenancy Branch