



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for cause, pursuant to section 55; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The landlord, the landlord's agent, and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 30 minutes.

The landlord, the landlord's agent, and the tenant confirmed their names and spelling. The landlord and the tenant provided their email addresses for me to send this decision to them after the hearing.

The landlord confirmed that she co-owns the rental unit with her husband and provided the rental unit address. She stated that she had permission to represent her husband at this hearing.

At the outset of this hearing, I informed both parties that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. The landlord, the landlord's agent, and the tenant all separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes, and the potential outcomes and consequences to both parties. I informed them that I could not provide legal advice to them. Both parties had an opportunity to ask questions, which I answered. Both parties stated that they were ready to proceed with this hearing, they did not want me to make a decision, and they wanted to voluntarily settle this application. Neither party made any adjournment or accommodation requests.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

The landlord provided documentary evidence that the tenant was served with the landlord's One Month Notice to End Tenancy for Cause, dated September 17, 2021, on the same date, by way of registered mail. The landlord provided a copy of the Canada Post receipt and tracking number with this application. The Canada Post website for the tracking number provided by the landlord, indicates that the mail was accepted at the post office on September 17, 2021, attempted delivery and a notice card was left for pickup on September 20, 2021, a final notice for pickup was left on September 27, 2021, the mail was unclaimed by October 7, 2021, and the mail was returned to sender on October 12, 2021. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 1 Month Notice on September 22, 2021, five days after its registered mailing. Unclaimed mail is considered deemed receipt under Residential Tenancy Policy Guideline 12.

The tenant stated that he did not receive a copy of the 1 Month Notice from the landlord. The tenant agreed that he received a warning about late rent from the landlord. The tenant agreed that he was repeatedly late paying rent to the landlord during this tenancy. The tenant confirmed that he wanted to settle this application, despite not receiving a copy of the 1 Month Notice from the landlord.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to replace the name of the landlord and correct the spelling of the tenant's first name. Both parties consented to these amendments during this hearing. I do not find any prejudice to either party in making these amendments.

Settlement Terms

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 and orders. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. The tenant agreed to pay the landlord full rent of \$1,913.00 total, by the first of each month, for the remainder of this tenancy;
2. Both parties agreed that this tenancy will end by 1:00 p.m. on September 30, 2022, by which time the tenant and any other occupants will have vacated the rental unit, in the event that the tenant abides by condition 1 of the above settlement;
3. Both parties agreed that this tenancy will end pursuant to a seven (7) day Order of Possession, if the tenant does not abide by conditions 1 or 2 of the above settlement;
4. The landlord agreed that the tenant can vacate the rental unit earlier than September 30, 2022, provided that the tenant first gives at least 7 days' written notice to the landlord by way of a letter by email;
 - a. The landlord and the tenant confirmed their email addresses during this hearing;
5. The landlord agreed to bear the cost of the \$100.00 filing fee paid for this application;
6. The landlord agreed that this settlement agreement constitutes a final and binding resolution of her application.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties affirmed at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute.

The terms and consequences of the above settlement were reviewed in detail, with both parties during this 30-minute hearing. Both parties had opportunities to ask questions and to negotiate and discuss the settlement terms in detail. Both parties affirmed under oath that they fully understood the above settlement terms and were agreeable to them. Both parties were given ample time to think about, review, and discuss the terms of this settlement privately during this hearing.

Conclusion

I order both parties to comply with all of the above settlement terms.

To give effect to the settlement reached between the parties and as discussed with them during the hearing, I issue the attached seven (7) day Order of Possession to be used by the landlord **only** if the tenant does not abide by conditions 1 or 2 of the above settlement. The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible after he does not comply with the above agreement. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In the event that the tenant abides by condition 1 of the above settlement, this tenancy continues only until 1:00 p.m. on September 30, 2022.

The landlord's 1 Month Notice, dated September 17, 2021, is cancelled and of no force or effect.

The landlord must bear the cost of the \$100.00 filing fee paid for this application.

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 24, 2022

Residential Tenancy Branch