



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPL, OPB, OPM**

Introduction

This hearing was convened as a result of the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession based on a Two Month Notice to End Tenancy for Cause dated November 4, 2021 ("2 Month Notice") pursuant to sections 47 and 55;
- an Order of Possession based on a Mutual Agreement to end tenancy pursuant to section 55(2)(d); and
- an Order of Possession for breach of a vacate clause that states the Tenant will vacate the rental unit at the end of the fixed term pursuant to section 55(2)(c).

The Landlord, the Landlord's translator ("AL") and the Tenant attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Landlord testified she served the Tenant with the Notice of Dispute Resolution Proceeding and her evidence ("NDRP Package") by registered mail on November 28, 2021. The Landlord submitted a Canada Post receipt, with the tracking number, into evidence to corroborate her testimony of service of the NDRP Package on the Tenant. I find the NDRP Package was served on the Tenant in accordance with sections 88 and 89 of the Act.

Preliminary Matter – Late Service of Tenant's Evidence on Landlord

The Tenant stated he served his evidence in the Landlord's mailbox on or about 6, 2022 but acknowledged he did not file his evidence with the Residential Tenancy Branch until March 8, 2022, being 6 days before the hearing. Rule 3.15 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") states:

3.15 Respondent's evidence provided in single package

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch *not less than seven days before the hearing*.

[emphasis in italics added]

10.5 Time Limit for respondent's evidence

The respondent must ensure evidence they intend to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible and at least two days before the hearing.

I find the Tenant's evidence was not filed with the RTB at least 7 sevens prior to the hearing. Based on the above, I decline to admit any of the Tenant's evidence for this hearing.

Settlement Agreement

Pursuant to section 63 of the Act, an 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 or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

The parties agreed to the following final and binding settlement of all issues currently under dispute:

1. The Landlord agrees, with the Tenant's consent, to cancellation of the 2 Month Notice;
2. The Tenant must vacate the rental unit not later than 1:00 pm on May 31, 2022;
3. The Tenant agrees to pay the Landlord \$1,500.00 for rental arrears for the months of January, February and March 2022;
4. The Landlord agrees to waive, and release the Tenant from, any claim for rent owing by the Tenant prior to January 2022;
5. The Tenant may end the tenancy before May 31, 2022, by serving the Landlord with a written notice pursuant to section 45(1) of the Act and serving it on the Landlord pursuant to section 88 of the Act; and
6. The Tenant will pay the Landlord the rent in full when due until the tenancy ends pursuant to the terms of this settlement.

These particulars comprise the full and final settlement of all aspects of the Landlord's dispute against the Tenant. The parties gave verbal affirmation at the hearing that they understood and agreed to the above terms as legal, final, and binding, which settle all aspects of claims made in the Landlord's application.

Conclusion

As the parties have reached a full and final settlement of all the claims set out in the Landlord's application, I make no factual findings about the merits of the Landlord's application.

I hereby order the 2 Month Notice to End Tenancy to be cancelled and of no force or effect.

To give effect to the settlement reached between the parties, and as discussed at the hearing:

1. I grant the Landlord an Order of Possession effective at 1:00 pm on August 31, 2022. 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; and
2. I order the Tenant pay the Landlord \$1,500.00 and grant the Landlord a Monetary Order for this amount. This Monetary Order may be enforced in Provincial Court.

The Landlord is provided with these Orders in the above terms and the Tenant must be served with these Orders as soon as possible.

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: March 16, 2022

Residential Tenancy Branch