



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application, filed on January 5, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's amended One Month Notice to End Tenancy for Cause, dated January 3, 2022 ("1 Month Notice"), pursuant to section 47.

The "first hearing" occurred on April 4, 2022 and lasted approximately 74 minutes. The "second hearing" occurred on May 17, 2022 and lasted approximately 18 minutes.

The landlord, the landlord's "witness DK," and the tenant attended both hearings. The tenant's three advocates, advocate KS ("tenant's advocate"), "advocate CJ," and "advocate DD," attended the first hearing only. Both witness DK and advocate DD left the first hearing without testifying. Witness DK attended but did not testify at the second hearing.

At both hearings, all hearing participants were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the first hearing, all hearing participants confirmed their names and spelling. At the first hearing, the landlord and the tenant both provided their email addresses for me to send copies of my interim decision to them. At the first hearing, the landlord stated that he owns the rental unit and confirmed the rental unit address.

At the second hearing, the landlord, the tenant, and witness DK confirmed their names and stated that no one else was participating in the hearing with them.

At both hearings, I notified all hearing participants that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure*. At the first hearing, the landlord, the tenant, the tenant's advocate, and advocate CJ all separately affirmed, under oath, that they would not record the first hearing. At the end of the second hearing, the landlord, the tenant, and witness DK all separately affirmed that they did not record the second hearing.

At both hearings, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. They had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

At the first hearing, the landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence. As per my interim decision, in accordance with sections 88, 89 and 90 of the *Act*, I found that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

At the first hearing, the tenant confirmed personal receipt of the landlord's 1 Month Notice on January 5, 2022. The landlord confirmed the above service method and date. As per my interim decision, in accordance with sections 88 and 90 of the *Act*, I found that the tenant was duly served with the landlord's 1 Month Notice on January 5, 2022. At the first hearing, the tenant confirmed that she filed her application on January 5, 2022, to dispute the notice.

Preliminary Issue - Adjournment of First Hearing and Settlement

The first hearing on April 4, 2022 was adjourned for a continuation after 74 minutes because it did not finish within the 60 minute hearing time and both parties had one witness each to testify. By way of my interim decision, dated April 4, 2022, I adjourned the tenant's application to the second hearing date of May 17, 2022. I informed both parties of the above information during the second hearing and they confirmed their understanding of same.

At the first hearing, I notified both parties that they would be sent copies of my interim decision and notice of reconvened hearing with the second hearing date information, from the RTB.

At the second hearing, I notified both parties that the tenant and her three advocates appeared at the first hearing, as did the landlord, and all participants had an opportunity to present submissions and testify. I informed them that the first hearing lasted 74 minutes, which exceeded the 60-minute hearing time allotted. I notified them that the first hearing was adjourned to allow both parties' witnesses to testify, since the tenant said she wanted to call her boyfriend as a witness and the landlord said he wanted to call witness DK. At the second hearing, the tenant said that her boyfriend did not want to attend to testify because of all the "drama."

At the outset of the second hearing, the landlord stated that the tenant's lawyer called him and asked for a settlement, for the tenant to move out on June 30, 2022. He said that both parties signed a mutual agreement to end tenancy for same and he wanted an order of possession. He claimed that since May 7, 2022, the tenant agreed that he can show the rental unit once per week to prospective tenants, if he provides 24 hours' notice to the tenant. The tenant agreed with the above information provided by the landlord.

At the second hearing, the tenant repeatedly affirmed that she was making a settlement agreement with the landlord, of her own free will, without being forced by anyone. She affirmed that she understood that she had a choice of me making a decision about her application or to settle her application voluntarily with the landlord. At both hearings, I informed the tenant that I could issue an order of possession if I upheld the landlord's 1 Month Notice or continue the tenancy if I cancelled the notice. The tenant confirmed that she did not want to take a risk of me making a decision, where an order of possession may be issued against her, so she would rather settle her application with the landlord.

At the second hearing, I informed both parties that they agreed to settle this application and I did not participate, since I was not present during their settlement discussions between the two hearing dates of April 4, 2022 and May 17, 2022. Both parties confirmed their understanding of and agreement to same.

At the second hearing, both parties agreed that they reached a mutual agreement prior to the second hearing, and they wanted me to record the terms of their settlement in writing in this decision.

Settlement Terms

Pursuant to section 63 of the *Act*, 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 second 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. Both parties agreed that this tenancy will end by 12:00 a.m. on June 30, 2022, by which time the tenant and any other occupants will have vacated the rental unit;
2. Both parties agreed that, since May 7, 2022, the landlord is permitted to show the rental unit to prospective tenants, once per week, provided that the landlord first gives at least 24 hours' notice to the tenant and the tenant agreed to provide access to the rental unit;
 - a. Both parties agreed to abide by section 29 of the *Act* to facilitate the above showings;
3. The landlord agreed that all of his notices to end tenancy, issued to the tenant, to date, are cancelled and of no force or effect;
4. The tenant agreed that this settlement agreement constitutes a final and binding resolution of her application at this hearing.

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

During the second hearing, the terms and consequences of the above settlement were reviewed in detail, with both parties. Both parties had opportunities to ask questions and to negotiate and discuss the settlement terms in detail. Both parties repeatedly affirmed that they fully understood and agreed to the above settlement terms voluntarily. Both parties repeatedly affirmed that they agreed and understood that the above settlement terms were final, binding, and could not be changed after the second hearing was over.

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 Order of Possession effective at 12:00 a.m. on June 30, 2022, to be used by the landlord **only** if the tenant does not abide by condition #1 of the above settlement. The tenant must be served with a copy of this Order. 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.

All of the landlord's notices to end tenancy, issued to the tenant, to date, are cancelled and of no force or effect.

I order both parties to comply with section 29 of the *Act* for the remainder of this tenancy.

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: May 17, 2022

Residential Tenancy Branch