



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with cross applications filed by the parties. On February 9, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlord's One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Residential Tenancy Act* (the "*Act*").

On March 7, 2022, the Tenant amended her Application seeking to cancel the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to Section 46 of the *Act*.

On March 16, 2022, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

K.M. attended the hearing as an agent for the Landlord. The Tenant attended the hearing late, at approximately 11:08 AM. 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, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

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 complies with the *Act*.

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.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's One Month Notice to End Tenancy for Cause and 10 Day Notice to End Tenancy for Unpaid Rent dismissed?
- If the Tenant is unsuccessful in cancelling the Notices, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

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 July 1, 2021, that rent was currently established at \$2,300.00 per month, and that it was due on the first day of each month. A security deposit of \$1,150.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

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 Monetary Order 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 One Month Notice to End Tenancy for Cause of February 2, 2022 is cancelled and of no force or effect.
2. The 10 Day Notice to End Tenancy for Unpaid Rent of March 2, 2022 is cancelled and of no force or effect.
3. The Two Month Notice to End Tenancy for Landlord's Use of Property of April 1, 2022 is still in effect.
4. The Tenant will maintain possession of the rental unit until July 1, 2022, but she must give up vacant possession of the rental unit by **1:00 PM on July 1, 2022 after service of this Order** on the Tenant. The Landlord will be awarded a conditional Order of Possession for this date.
5. However, the Tenant must pay to Landlord the sum of **\$7,189.00** by **May 20, 2022** by electronic transfer or another means of bank transfer. This amount is calculated as \$2,300.00 for March 2022 rent, \$2,300.00 for April 2022 rent, \$2,300.00 for May 2022 rent, \$189.00 for a towing fee, and \$100.00 for the filing fee.
6. The Tenant will not owe June 2022 rent as this will amount to the one month's compensation owed based on the live, Two Month Notice to End Tenancy for Landlord's Use of Property of April 1, 2022.
7. The parties agreed that fulfilment of these conditions would amount to full and complete satisfaction of this dispute.

Should the Tenant not satisfactorily comply with condition 5 of this settlement agreement, the Landlord's conditional Order of Possession will then be effective **two days after service of this Order** on the Tenant.

The Landlord will also be granted a conditional Monetary Order in the total amount owed by the Tenant in the event that the Tenant does not comply with condition 5 of this settlement. However, if the Tenant does compensate the Landlord for some or all of the amount awarded, the Monetary Order will only be enforceable in the amount that remains in arrears.

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 matters.

Conclusion

The parties reached a full and final settlement agreement in resolution of this dispute. I have recorded the terms of settlement in this Decision and in recognition of the settlement agreement, the Landlord is granted a conditional Order of Possession effective at **1:00 PM on July 1, 2022 after service of this Order** on the Tenant. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, the Landlord may file the Order with the Supreme Court of British Columbia and be enforced as an Order of that Court.

In addition, should the Tenant fail to comply with the payment requirements set forth in condition 5 of this settlement, the Landlord's conditional Order of Possession will become effective **two days after service on the Tenant**. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, the Landlord may file the Order with the Supreme Court of British Columbia and be enforced as an Order of that Court.

As well, in support of the settlement described above, and with the agreement of the parties, I grant the Landlord a Monetary Order in the amount of **\$7,189.00**. The Landlord **must not** serve or seek to enforce this Order on the Tenant, unless the Tenant fails to meet condition 5 of the payment schedule set out in the settlement agreement. The Landlord is provided with this Monetary Order in the above terms and should the Tenant fail to meet the conditions of the payment schedule, the Order must be served on the

Tenant by the Landlord. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. Only the amounts remaining unpaid will be enforceable on the Tenant.

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 13, 2022

Residential Tenancy Branch