



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNRL-S

Introduction

This hearing dealt with cross-applications filed by the parties. On March 28, 2022, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”).

On May 8, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession for Unpaid Rent based on the Notice pursuant to Section 46 of the *Act* and seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*.

This hearing was scheduled to commence via teleconference at 1:30 PM on July 15, 2022.

The Tenant attended the hearing. V.N. attended the hearing as well, 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, 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.

The Tenant advised that she did not serve the Notice of Hearing package to the Landlord. As this package was not served to the Landlord pursuant to Rule 3.1 of the Rules of Procedure, the Tenant's Application is dismissed in its entirety.

V.N. advised that the Tenant was served with the Notice of Hearing and evidence package by registered mail on June 9, 2022, and the Tenant confirmed receiving this package. Based on this undisputed evidence, I am satisfied that the Tenant has been sufficiently served the Landlord's Notice of Hearing and evidence package. As such, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

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 complies 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?
- 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 February 1, 2020, that rent was established at an amount of \$2,513.00 per month, and that it was due on the first day of each month. A security deposit of \$1,256.50 was also paid. A copy of the Application for Tenancy was submitted as documentary evidence as the apparent tenancy agreement.

V.N. advised that the Notice was served to the Tenant by being posted on the Tenant's door on March 22, 2022. Given that the Tenant disputed the Notice, I am satisfied that she received it. The Notice indicated that \$6,538.34 was owing for rent on March 1, 2022. As well, the effective end date of the tenancy was noted on the Notice as April 4, 2022.

She provided submissions with respect to the Tenant's alleged rental arrears; however, when the Landlord's calculations were audited, it was evident that the amount owing on the Notice was incorrect. Based on the Landlord's poor accounting of rental arrears, it was not entirely clear exactly how much was in arrears. Regardless, it is the Landlord's position, based on the documentary evidence, that a substantial amount of rent was still outstanding. Moreover, the Tenant did not pay any rent for April, May, June, or July 2022. She referenced the documentary evidence submitted to support the Landlord's position of rental arrears that justified service of the Notice.

The Tenant acknowledged that the Landlord's accounting of her e-transfers of rent was accurate; however, she claimed to have made additional cash payments to the Landlord throughout this period of time. However, she could not identify exactly when these were payments were made, and she did not have any proof of making these payments. She acknowledged that she was in arrears some rent, but she was not entirely sure how much. She attributed the arrears in part due to personal circumstances, and as well due to her own roommates/occupants/tenants not paying her any monies owed. She confirmed that she did not have any valid reason under the *Act* for withholding the rent.

After hearing submissions from the parties, they 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 10 Day Notice to End Tenancy for Unpaid Rent of March 22, 2022 is cancelled and of no force or effect.
2. The Tenant will remain in possession of the rental unit, but must give up vacant possession on **August 1, 2022 at 1:00 PM**.
3. The Landlord is provided with an Order of Possession.
4. The Landlord will forgo any rental arrears owing prior to the date of this hearing.
5. The parties agreed that fulfilment of these conditions would amount to full and complete satisfaction of these disputes.

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.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

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 10 Day Notice to End Tenancy for

Unpaid Rent of March 22, 2022 to be cancelled and of no force or effect.

In addition, the Landlord is provided with a formal copy of a conditional Order of Possession effective on **August 1, 2022 at 1:00 PM 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: July 15, 2022

Residential Tenancy Branch