



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

On September 9, 2022, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a Two-Month Notice to End Tenancy for the Landlord’s Use of the Property (the “Notice”). The matter was set for a conference call.

The Tenant, the Tenant’s Advocate (the “Tenant”) and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue – Application Amendment

At outset of these proceedings, it was noted that the Landlord had not issued a Two-Month Notice to End Tenancy for the Landlord’s Use of the Property but that the Landlord and Tenant had signed a mutual agreement to end this tenancy.

The Tenant testified that they are seeking to have the mutual agreement to end their tenancy voided.

The Landlord testified that they understood that no Notice to end tenancy had been issued and that the Tenant was seeking to have the mutual agreement to end their tenancy voided.

Both parties agreed that it was just a clerical error in the application code selected for these proceedings and confirmed that they were both prepared to proceed in today's proceedings to determine the validity of the mutual agreement to end the tenancy.

Section 4.2 of the Residential Tenancy Branch rules of procedure states the following regarding application amendment during the hearing:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I find it reasonable and appropriate to amend the Tenant's application during this hearing. The Tenant's request to cancel a Two-Month Notice to End Tenancy for the Landlord's Use of the Property is removed, and a request to determine the validity of the mutual agreement to end the tenancy is added to this application.

Issue to be Decided

- Should the Mutual agreement to end tenancy be cancelled?

Background and Evidence

The Tenant recorded on their application for these proceedings that their tenancy began on October 1, 2007. That rent in the amount of \$665.00 is to be paid by the first day of each month and Tenant paid the Landlord a \$287.00 security deposit.

During the hearing, both parties expressed a desire to enter into a settlement agreement to end the tenancy.

Section 63 of the *Act* allows for the parties to consider a settlement to their dispute during the hearing, and that any settlement agreement reached during the hearing may be recorded in the form of a decision and an order. In accordance with this, an opportunity for a settlement discussion was presented, and the parties came to an agreement on a settlement that would resolve their dispute.

During the hearing, the parties agreed to the following settlement:

1. The Tenant will move out of the rental unit no later than February 28, 2023, at 1:00 p.m.
2. The Landlord will not charge the Tenant rent for February 2023, as compensation for agreeing to end the tenancy.

The above terms of the settlement agreement were reviewed with all parties at the end of the hearing and all parties confirmed that they were entering into the settlement agreement on a voluntary basis. They also confirmed understanding of the terms of the settlement agreement as full and final settlement of this matter.

Analysis

In order to enforce the conditions of the settlement agreement reached between the Landlord and Tenant, an **Order of Possession** will be granted to the Landlord.

I grant the Landlord an **Order of Possession** effective not later than 1:00 p.m. on February 28, 2023. 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. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The parties are ordered to comply with the terms of the settlement agreement as outlined in this decision.

I grant an **Order of Possession** to the Landlord to be served on the Tenant, effective no later than 1:00 p.m. on February 28, 2023. 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.

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: January 17, 2023

Residential Tenancy Branch