



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SELECT REAL ESTATE PROPERTY MANAGEMENT
DIVISION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FFT
 OPR-DR, FFL

Introduction

This hearing dealt with the cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s application for Dispute Resolution was made on October 8, 2022. The Tenant applied to cancel a 10-Day Notice to End Tenancy for Unpaid Rent and to recover their filing fee.

The Landlord filed a Direct Request Application on October 26, 2022. As the Tenant had already filed a dispute of the Notice, the Landlord’s application was crossed with the Tenant’s applications to be heard at the same time. The Landlord applied for an order of possession to enforce a 10-Day Notice for Unpaid Rent, a monetary order for unpaid rent and to recover their filing fee.

An Agent for the Landlord (the “Landlord”) and the Tenant 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.

Issues to be Decided

- Should the 10-Day Notice issued on October 4, 2022, be cancelled?
- If not, is the Landlord entitled to an order of possession and a monetary order for unpaid rent?
- Is the Tenant entitled to the return for their filing fee for this application?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that the tenancy began on August 1, 2022, and that rent in the amount of \$2,150.00 is to be paid by the first day of each month. The parties agreed that a security deposit of \$1,075.00 was paid to the Landlord for this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

During the hearing, both parties expressed a desire to enter into a mutual agreement to extend the move out date on the Notice.

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 agreed to move out of the rental unit on January 13, 2023, by 2:00 p.m.
2. The Tenant agreed that they owe the Landlord \$10,750.00 in outstanding rent for the months of September 2022, October 2022, November 2022, December 2022 and January 2023.
3. The Tenant agreed that the Landlord would be given an order of possession and a monetary order for the outstanding rent, less the security deposit.

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** and a **Monetary Order** will be granted to the Landlord.

I grant the Landlord an **Order of Possession** effective not later than 2:00 p.m. on January 13, 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 are cautioned that costs of such enforcement is recoverable from the Tenant.

I grant the Landlord permission to retain \$1,075.00 from the security deposit they are holding for this tenancy in partial satisfaction of the outstanding rent agreed to during these proceedings.

Additionally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. In this case, both the Landlord and the Tenant have requested to recover their respective filing fees. As the Tenant has agreed that they have not paid the rent for this tenancy in accordance with their tenancy agreement, I find that they are not entitled to the recovery of their filing fee. As the Landlord has been successful in their application, I find that they are entitled to recover their \$100.00 filing fee paid for these proceedings. I award the Landlord \$100.00 in the recovery of their filing fee for these proceedings.

Overall, I find that the Landlord has established an entitlement to a monetary order in the amount of \$9,775.00; consisting of \$10,750.00 in outstanding rent for September, October, November, December 2022 and January 2023, \$100.00 in the recovery of their filing fee for this hearing, less \$1,075.00 the Landlord is holding in a security deposit for this tenancy.

I grant the Landlord a **Monetary Order** in the amount of **\$9,775.00** pursuant to sections 38, 67 and 72 of the *Act*. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. 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.

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 2:00 p.m. on January 13, 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.

I grant a **Monetary Order** for **\$9,775.00** to the Landlord to be served upon the Tenant should the Landlord 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.

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 12, 2023

Residential Tenancy Branch