



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

SETTLEMENT DECISION

Dispute Codes CNC, LRE, OLC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy for Cause (the "Notice"), pursuant to section 47;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this Settlement Decision.

Preliminary Issue- Service

The tenant testified that she served the landlord with her application for dispute resolution and evidence via registered mail on January 13, 2023. No proof of service documents were entered into evidence.

The landlord testified that on January 17, 2023 he received a registered mail package from the tenant that contained one piece of paper which was a gmail email. The landlord testified that the Notice of Dispute Resolution Proceeding (NODRP) was not included in the package and he had to contact the Residential Tenancy Branch (RTB) to obtain a copy. The RTB dispute management system shows that the landlord emailed the RTB on January 18, 2023 stating that the NODRP was not provided by the tenant. On January 19, 2023 the RTB sent the landlord a courtesy copy of the NODRP.

I find that the tenant has not proved, on a balance of probabilities that the landlord was served with the NODRP as no proof of service documents were entered into evidence and the landlord disputed service. I therefore dismiss the tenant's application for dispute resolution with leave to reapply for failure to prove service in accordance with Rule 3.5 of the RTB Rules of Procedure.

Section 55(1) of the *Act* states that if the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice, the director must grant the landlord an order of possession and an order requiring the payment of the unpaid rent.

Pursuant to section 55(1) of the *Act*, even though the tenant's application to cancel the Notice was dismissed, the validity of the Notice and the right of the landlord to an Order of Possession still required hearing.

During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute regarding the Notice.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

Settlement

Both parties agreed to the following final and binding settlement of the tenant's application to cancel the Notice:

1. The landlord agrees to cancel the Notice dated January 6, 2023.
2. The tenant agrees to vacate the subject rental property by 1:00 p.m. on June 30, 2023.

These particulars comprise the full and final settlement of the tenant's application to cancel the Notice. Both parties gave verbal affirmation at the hearing that they understood and agreed to the above terms as legal, final and binding, which settle the tenant's application to cancel the Notice.

Conclusion

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 **1:00 p.m. on June 30, 2023**, to be used by the landlord **only** if the tenant does not abide by the terms of the settlement agreement. The Order of Possession should be served on the tenant.

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: May 11, 2023

Residential Tenancy Branch