



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, MNDCT, RR, RP, LRE, OLC

Introduction

The Tenant completed their Application for Dispute Resolution (the “Application”) in this matter on March 14, 2023. They are seeking a cancellation of the Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two-Month Notice”) issued by the landlord on February 28, 2023.

The Tenant is also seeking:

- suspension/set conditions on the Landlord’s right to enter the rental unit,
- compensation for monetary loss or other money owed;
- reduced rent for repairs, services or facilities agreed upon but not provided;
- repairs made to the rental unit after contacting the Landlord;
- the Landlord’s compliance with the legislation and/or tenancy agreement.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 15, 2023. Both the Landlord and the Tenant attended the conference call hearing, with representative counsel.

Preliminary Matter – Tenant’s Notice of Dispute Resolution Proceeding and evidence

In the hearing, the Tenant stated they provided their evidence for consideration directly to the Landlord. This included a chart they described throughout the hearing, as well as a photo page, to a prearranged email address the Landlord arranged for service. The Landlord presented that they received a “timeline” from the Tenant, and some photos, and two witness statements.

The Tenant did not provide this material to the Residential Tenancy Branch for my consideration. This is required as per the *Residential Tenancy Branch Rules of Procedure*, in particular Rule 2.5 and Rule 3.14.

Though the Tenant referred to this material throughout the hearing, I did not receive copies for my consideration; therefore, I omit the evidence from consideration, by application of Rule 3.17. The Tenant did not provide proof they provided this material to the Residential Tenancy Branch, and it is not present in their file.

The Tenant did provide a Monetary Order Worksheet to the Residential Tenancy Branch, signed and dated March 12, 2023. They stated they provided this to the Landlord directly via email. The Landlord could not identify such a form, with reference to the line-by-line content that I described in the hearing, as well as the Tenant's signature and date.

The Tenant did not prove service to the Landlord adequately in the hearing. By Application of Rule 3.17, I do not accept this evidence for consideration, based on the fact they did not provide it to the Landlord as required. It would be fundamentally unfair for me to use this evidence in preparation of a decision when the Landlord has not had the chance to review it in advance.

The above sets of evidence were related to the Tenant's claims for compensation and/or rent reduction. Because the Tenant did not provide evidence to one of the Residential Tenancy Branch or the Landlord, or both, I dismiss these parts of the Tenant's Application, without leave to reapply. Additionally, the Tenant could not describe matters in a linear fashion in the hearing and did not clearly present what they felt was compensation owing; therefore, I find there is no direct testimony in the matter that was clearly presented and reliable.

Settlement Terms

At the start of the hearing the Tenant stated they paid the Landlord for one additional day they could stay in the rental unit. Specifically, this was for May 16, the day after the scheduled hearing. Ostensibly this was for additional movement of their personal property out from the rental unit, and additional cleaning.

The Tenant stated they would commit out from the rental unit on May 17, 2023, by 1:00pm. I confirmed this time with the Landlord in the hearing. The parties agreed to a

walk-through inspection at the rental unit on May 17, 2023 at 10:00am. The Tenant provided that they would have a third party participate in this condition inspection meeting on their behalf.

On each of these terms, the Landlord stated their agreement.

Pursuant to s. 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties agree on the terms, the settlement may be recorded in the form of a decision. Both parties reached an agreement on the end-of-tenancy date.

Both parties agreed to the following final and binding settlement of all issues currently under dispute in regard to the Landlord's Two-Month Notice:

1. The tenancy shall end on May 17, 2023 by 1:00pm.
2. The parties shall jointly complete an inspection of the rental unit at 10:00am on May 17, 2023.
3. The Landlord shall complete and Condition Inspection Report together with the party who attends on the Tenant's behalf.
4. The security deposit and/or pet damage deposit is subject to s. 38 of the *Act*. The parties may jointly agree on dispensation of those amounts at the time of the inspection meeting.

I find that the parties agreed that their agreement constitutes a final and binding resolution of the Tenant's Application at this hearing. Given that the tenancy will end on May 15, 2023, I find the questions on restrictions to the Landlord's entry, and repairs to the rental unit, and the Landlord's compliance with the *Act* and/or the tenancy agreement, are not relevant to the parties' relation going forward. I dismiss these parts of the Tenant's Application, without leave to reapply.

These particulars above comprise the full and final settlement of all aspects of this dispute for both parties. I am satisfied that both parties have an agreement in place including the above terms. For the purposes of this dispute resolution process, the above terms are legal, final, binding and enforceable and settle all aspects of this dispute.

Conclusion

To give effect to the settlement reached between the parties, and as advised to the parties in the hearing, I issue the attached Order of Possession to be used by the Landlord only if the Tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on May 17, 2023. The Landlord must serve the Tenant this Order of Possession only if the Tenant and any other occupant fail to vacate the rental premises by that time. Should the Tenant fail to comply with the Order of Possession, the Landlord may file the Order of Possession with the Supreme Court of British Columbia, where it may be enforced as an Order of that Court.

This decision/agreement is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: May 15, 2023

Residential Tenancy Branch