



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55.

The landlord and his lawyer, JH (collectively "landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that his lawyer had authority to make submissions on his behalf at this hearing. This hearing lasted approximately 118 minutes in order to allow both parties to fully negotiate a settlement of this claim and to provide additional time for both parties to make settlement decisions and consult with trusted advisors.

The tenant confirmed receipt of the landlord's application for dispute resolution and hearing notice. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application and hearing notice.

Preliminary Issue – Adjournment Request by Tenant

The tenant confirmed that he did not receive the landlord's written evidence package, which the landlord said was posted to the tenant's rental unit door on November 23, 2016. The tenant said that he was at a treatment facility and had been for the last approximately 100 days prior to this hearing date. He said that he did not provide the landlord with a new service address or advise him that he would be staying in a treatment facility for an extended period of time.

I advised both parties that I found that the tenant was deemed served with the landlord's written evidence package on November 26, 2016, three days after its posting, as the

tenant had not notified the landlord of a new service address or that he would be leaving the rental unit for an extended period of time. However, as this matter settled, the landlord's written evidence package was not considered at this hearing in any event.

At the outset of the hearing, the tenant requested an adjournment of this hearing because he said that he did not have enough time to prepare for the hearing. He stated that he only received the landlord's application and notice of hearing sometime in November 2016, although he could not recall the exact date. The landlord said that his application was posted to the tenant's rental unit door on October 23, 2016 because that was the only service address that the tenant had provided to him at the time. The tenant said that his sister and brother-in-law checked the rental unit and brought the paperwork to him at the treatment facility. The tenant maintained that he did not receive the landlord's written evidence package so he was unable to provide responsive evidence in the form of receipts and audio recordings. He claimed that he wanted to wait until he was out of the treatment facility but he did not know his exact date of release. The tenant stated that he would return to the rental unit in order to find the receipts and audio recordings but that he was unsure if they were still there, since there had been a police raid in the rental unit. The tenant stated that he did not have a friend, family member or other agent attend at the hearing on his behalf or gather his documents because the rental unit was in a mess due to the police raid.

The landlord opposed the adjournment request, stating that he had waited long enough for this hearing and the tenant had not paid rent for almost three years. He said that the police advised him not to attend at the rental unit because it was dangerous. He stated that he wanted a quick resolution to this matter.

During the hearing, I advised the parties that I was not granting an adjournment of this hearing. I did so after taking into consideration the criteria established in Rule 7.9 of the RTB *Rules of Procedure*, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

I find that the tenant was deemed served with the landlord's application on October 26, 2016, three days after its posting. I find that the landlord served the tenant at the only available address that was provided to him, since the tenant had not notified the landlord of a new service address or that he would be leaving the rental unit for an extended period of time. During this hearing, the tenant also provided the rental unit as a service address for me to send my decision.

The tenant agreed that he received the landlord's application sometime in November 2016. I find that the tenant had ample time to prepare for this hearing and to arrange for an agent to attend on his behalf, gather his paperwork and check the rental unit for the landlord's written evidence package. I find that the tenant is unaware of his release date, which could take some time, and he may not even have the files that he is intending to produce for this hearing. I find that the landlord filed his application on October 21, 2016 and waited until December 12, 2016 for this hearing to take place. I also find that as an order of possession issue is involved, this is an urgent application, particularly as the police have warned the landlord about the dangers of the rental unit, which is still in the tenant's possession.

Analysis

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

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. Both parties agreed that this tenancy will end by 5:00 p.m. on January 31, 2017, by which time the tenant and any other occupants will have vacated the rental unit;
2. Both parties agreed that the landlord is authorized to dispose of any remaining possessions and vehicles left by the tenant at the rental unit property, without any compensation to the tenant, after 5:00 p.m. on January 31, 2017;
3. The landlord agreed that his 10 Day Notice, undated, with an effective move-out date of October 15, 2016, in the amount of \$13,200.00 due on September 1, 2016, was cancelled and of no force or effect;

4. The landlord agreed that no further rent was owed by the tenant for this tenancy up to and including January 31, 2017;
5. Both parties agreed that the landlord will retain the tenant's entire security deposit of \$500.00;
6. The landlord agreed that this settlement agreement constitutes a final and binding resolution of the landlord's application at this hearing.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties affirmed at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute.

The tenant was provided with additional time during the hearing in order to think about the settlement and to call a trusted person in order to discuss the settlement before agreeing to it. I explained the settlement process and the effect of such settlement to the tenant a number of times during the hearing. I reconfirmed with the tenant a number of times that he was agreeing to the settlement of his own free will, without any pressure from anyone else.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during 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 5:00 p.m. on January 31, 2017. The tenant must be served with this Order in the event that the tenant and any other occupants fail to vacate the rental premises by 5:00 p.m. on January 31, 2017. 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 landlord's 10 Day Notice, undated, with an effective move-out date of October 15, 2016, in the amount of \$13,200.00 due on September 1, 2016, is cancelled and of no force or effect.

I order the landlord to retain the tenant's entire security deposit of \$500.00.

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: December 13, 2016

Residential Tenancy Branch