



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDCT, FFT

Introduction

On June 11, 2019, the Tenant applied for a Dispute Resolution proceeding seeking an Order for the Landlord to comply pursuant to Section 62 of the *Residential Tenancy Act* (the “*Act*”), seeking monetary compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On June 18, 2019, the Tenant amended his Application seeking to cancel a Notice to End Tenancy; however, he did not indicate what notice he was seeking to have cancelled.

The Tenant attended the hearing. The Landlord attended the hearing as well, with W.T. appearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that he did not serve the Notice of Hearing package to the Landlord, but served the Amendment and his evidence by Purolator courier on or around June 18, 2019. W.T. confirmed that the Landlord did not receive the Notice of Hearing package and only found out about the Dispute Resolution hearing when she received the Amendment and evidence on June 21, 2019. She then contacted the Residential Tenancy Branch in or around early July 2019 to find out the details of the dispute. However, W.T. advised that the Landlord was prepared to continue the hearing despite not being served the Notice of Hearing package. Consequently, I elected to continue with the hearing.

The Landlord advised that she served her evidence by placing it under the Tenant’s door on July 15, 2019; however, she provided differing accounts of what documents she

recalled serving, and she was uncertain exactly what evidence she did serve to the Tenant. The Tenant confirmed that he received the Landlord's evidence on July 15, 2019 but the only documents included were the One Month Notice to End Tenancy for Cause, the 10 Day Notice to End Tenancy for Unpaid Rent, and the Proof of Service document. Based on the Landlord's ambiguous testimony, I am satisfied that the only documents served that I will consider are the documents that the Tenant acknowledged to have received.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to an Order that the Landlord comply?
- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on February 15, 2019. Rent was established at \$800.00 per month; however, there was some dispute over when rent was due each month. A security deposit was not paid.

T.W. advised that the Tenant was served with a One Month Notice to End Tenancy for Cause, a 10 Day Notice to End Tenancy for Unpaid Rent, and the Proof of Service for these Notices on July 5, 2019 by posting it to the Tenant's door.

The Tenant acknowledged receiving these Notices; however, he stated that he received these Notices under his door on July 15, 2019.

Settlement Agreement

The possibility of a settlement was raised, pursuant to Section 63(1) of the *Act*, which allows an Arbitrator to assist the parties to settle the dispute. I explained to the parties that settlement discussions are voluntary, that if they chose not to discuss settlement I would make a final and binding decision on the matter, and that if they chose to discuss settlement and did not come to an agreement, that I would make a final and binding decision on the matter.

I advised the parties that if they did come to an agreement, I would write out this agreement in my written decision and make any necessary orders. I also explained that the written decision would become a final and legally binding agreement. The parties did not have questions about discussing a settlement when asked.

The parties engaged in a discussion on what would be an amenable settlement for both parties. The Landlord and the Tenant agreed as follows:

1. The 10 Day Notice to End Tenancy for Unpaid Rent of July 5, 2019 is cancelled and of no force or effect.
2. The One Month Notice to End Tenancy for Cause of July 5, 2019 is cancelled and of no force or effect.
3. The Tenant and Landlord agreed that the Tenant will have possession of the rental unit, but must vacate the rental unit by **August 31, 2019 at 12:00 PM**.
4. The Tenant must pay rent in the amount of **\$800.00** by the end of July 23, 2019 for July 2019.
5. The Tenant must pay rent in the amount of **\$800.00** by the end of August 1, 2019 for August 2019.
6. The Tenant is responsible for collecting his property from the storage unit and he must pay any additional storage cost that has not already been paid by the Landlord.
7. The Tenant must move his vehicle to a different location on the driveway, as directed by the Landlord.
8. The parties agreed that fulfilment of these conditions would amount to full and complete satisfaction of the issues with respect to this tenancy, and no future applications would be made against the other party. However, this does not include any issues with respect to damage and cleaning of the rental unit at the end of tenancy.

This agreement is fully binding on the parties. If conditions three through seven are not satisfactorily complied with, the Landlord is granted an Order of Possession effective **two days after service of this Order** on the Tenant.

If conditions four or five are not satisfactorily complied with, the Landlord is provided with a conditional Monetary Order in the amount of **\$1,600.00** in the above terms. 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.

This settlement agreement was reached in accordance with Section 63 of the *Act*. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the binding nature of this full and final settlement of these matters.

Conclusion

I have recorded the terms of settlement in this decision and in recognition of the settlement agreement, based on the above, I hereby order that the One Month Notice to End Tenancy for Cause and the 10 Day Notice to End Tenancy for Unpaid Rent of July 5, 2019 are cancelled and of no force or effect.

In addition, in support of the settlement described above and with agreement of both parties, I grant the Landlord a conditional Order of Possession, to serve and enforce upon the Tenant if necessary, effective at **12:00 PM on August 31, 2019 after service of this Order**. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, the Landlord may file the Order with the Supreme Court of British Columbia and be enforced as an Order of that Court.

This Order of Possession is conditional and effective **two days after service of this Order** on the Tenant if the Tenant does not comply with conditions three through seven of this settlement.

The Landlord is also provided with a conditional Monetary Order in the amount of **\$1,600.00** in the above terms if the Tenant does not comply with conditions four or five of this settlement. 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.

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: July 23, 2019

Residential Tenancy Branch