



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, CNR, OLC

Introduction

This hearing dealt with two separate applications from the tenants under the *Residential Tenancy Act* (the *Act*). Their application of July 8, 2019 requested:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice pursuant to section 46; and
- cancellation of the landlord's 1 Month Notice pursuant to section 47.

Their application of July 9, 2018 requested orders requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Landlord BSJ (the landlord) confirmed that they had full authority to act on behalf of the other landlords.

As the tenant confirmed that they were handed the 10 Day Notice and the 1 Month Notice on June 10, 2019, I find that the tenant was duly served with these Notices in accordance with section 88 of the *Act*. As the landlord confirmed that they were handed copies of the tenant's dispute resolution hearing packages for both applications outlined above on August 27, 2019, I find that the landlords were duly served with these packages in accordance with section 89 of the *Act*. Since both parties confirmed that they had received any written evidence provided to one another, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlords' 10 Day Notice and/or 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession? Should any other orders be issued with respect to this tenancy?

Preliminary Information Regarding Other Applications and Decisions Affecting this Tenancy

There have been a number of applications and decisions issued with respect to this tenancy, most of which have a direct bearing on the matters before me.

For example, on July 3, 2019, an Arbitrator appointed pursuant to the Act issued a decision with respect to the tenant's application for emergency repairs of this rental unit (see above). In that decision, the Arbitrator made the following findings:

...In this case, I accept the undisputed testimony of both parties that hydro utilities were disconnected by the service provider in August 2016. Based upon the submissions of both parties, I find that utilities were part of the tenancy agreement and provided by the landlord. As such, I find that the hydro utilities are considered a material term of the tenancy and the tenant has been successful in his application. I order the landlord to re-connect the hydro utilities by July 31, 2019. If the landlord fails to comply with this order, the tenant is authorized to reduce rent by \$250.00 each month (beginning August 1, 2019) until the landlord complies with the order...

On August 26, 2019, another Arbitrator issued a decision and a 2 Day Order of Possession with respect to the landlords' application for an Order of Possession pursuant to the 10 Day Notice and 1 Month Notice that are subject to the tenant's current application to cancel those Notices (see above). That Arbitrator made the following findings in issuing the landlords a 2 Day Order of Possession:

...Although the parties at the hearing were not in agreement as to whether the reasons for the notices were valid, as I am not satisfied that the Tenant applied to dispute the notices in accordance with Sections 46(4) and 47(4), I find that Sections 46(5) and 47(5) of the Act apply. Therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on both the 10 Day Notice and the One Month Notice.

Upon review of both notices, I find that the form and content comply with Section 52 of the Act. Therefore, pursuant to Section 55 of the Act, I find that the Landlord is entitled to an Order of Possession. I award the Landlord a two-day Order of Possession...

The tenant applied for review consideration of the August 26, 2019 decision. Although neither party had yet received a copy of the review consideration decision of September 4, 2019 at the time of this hearing, the Arbitrator delegated responsibility to review that application dismissed

the tenant's application (see above). As the parties had not yet received that decision, I committed to include a copy of that decision with my decision in the matter before me.

A final application was heard by another Arbitrator appointed pursuant to the *Act* on September 10, 2019 (see above). Although the presiding Arbitrator heard testimony from the parties that day with respect to the tenant's application for a full recovery of all rent paid to the landlords from April 2016 until August 31, 2019, no decision has yet been issued with respect to that application by the tenant.

Background and Evidence

Based on the evidence before me, the landlords have a legally enforceable 2 Day Order of Possession with respect to this tenancy resulting from the August 26, 2019 decision on the same Notices to End Tenancy issued by the landlords; however, the landlords have accepted a payment from the tenant, which would enable the tenant to remain in use and occupancy of the rental unit until at least September 30, 2019.

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 engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding resolution of their dispute:

1. Both parties agreed that this tenancy will end by 5:00 p.m. on September 30, 2019, by which time the tenant will have surrendered vacant possession of the rental unit to the landlords.
2. The landlords agreed to not exercise the 2 Day Order of Possession issued on August 26, 2019 with respect to this tenancy.
3. Both parties agreed that the rent paid by the tenant and due for the months of May, June and July 2019 was \$350.00 per month.
4. Both parties agreed that as the landlords did not comply with the previous Arbitrator's July 3, 2019 decision to reconnect the hydro supply to this rental unit by July 31, 2019, that the monthly rent for August and September 2019 was set at \$100.00.
5. Both parties agreed to participate in a joint move-out condition inspection of the rental unit at 5:00 p.m. on September 30, 2019.
6. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenant's application and all issues regarding the amount of rent be paid in this tenancy for the period from May 1, 2019 until September 30, 2019, and that they

did so of their own free will and without any element of force or coercion having been applied.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the tenant does not vacate the rental premises in accordance with their agreement by 5:00 p.m. on September 30, 2019. The landlords are provided with these Orders in the above terms and the tenant must be served with an Order in the event that the tenant does not vacate the premises by the time and date set out in their agreement. 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.

To give legal effect to the landlord's commitment to not exercise the 2 Day Order issued on August 26, 2019, I order that the 2 Day Order is hereby set aside.

I order that the rent paid by the tenant and the amount due for the months of May, June and July 2019 is set at \$350.00 per month. I order that the amount paid by the tenant and the amount due for the months of August and September 2019, as per the decision of July 3, 2019 and as agreed to by the parties at this hearing, is set at \$100.00.

I order the parties to participate in a joint move-out condition inspection of the rental unit at 5:00 p.m. on September 30, 2019.

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: September 13, 2019

Residential Tenancy Branch