



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MDSD & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served by mailing, by registered mail to where the respondent resides on July 1, 2014. With respect to each of the applicant's claims I find as follows:

Preliminary Matter:

The applicants filed an amendment to the Application for Dispute Resolution which was received by the Residential Tenancy Branch on July 14, 2014. That document seeks a monetary order for damages in the sum of \$3200, the cost of the bailiff in the sum of \$2500, and an order to keep the security deposit and pet damage deposit. Those claims are premature as the tenant is still in the rental unit. I order that the additional claims set out in the Amended Application for Dispute Resolution severed from the within application. The landlord retains the right to file another Application for Dispute Resolution at a later date making those claims..

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

On July 1, 2012 the parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on July 1, 2012, end on June 30, 2014 and become month to month after that. The rent was \$1000 and the tenants paid a security deposit of \$500.

In the summer of 2013 the parties signed a second fixed term tenancy agreement. The rent was \$1100. The landlord testified and produced a form of agreement which provided that the tenancy would end on June 30, 2014 and “at the end of this time the tenancy ends and the tenant must move out of the rental property.” There are initials under those provisions from the landlord and the tenant. The tenant disputes this version of the tenancy agreement. On August 15, 2014 the tenant faxed a copy of a form of tenancy agreement to the Residential Tenancy Branch which show most of the provisions are the same. However, the tenant’s version states the tenancy is for a fixed term and at the end of this time “the tenancy may continue on a month to month basis, or for another fixed term.” The tenant failed to provide the landlord with a copy of the version of the tenancy agreement.

The rent has been paid for August. However, the relationship between the parties has significantly deteriorated. There is a great deal of animosity between the parties. The landlords live out of town and the tenant failed to show for an arranged meeting in the spring of this year where the parties were going to discuss the renewal of the lease. The landlords testified they now wish to return home and require possession of their home. They also testify the tenant has caused significant damage to the rental unit and

property and are desperate that the tenant vacate in order to preserve their property from further damage.

On at least two occasions one of the tenants gave oral notice they were leaving the rental unit but they refused to follow up with written notice. At the hearing the tenant stated she did not want to live in the rental unit indefinitely but wanted an additional time to find an alternative rental unit.

Analysis:

The issue is whether the tenant's form of tenancy agreement should be admitted into evidence given that the tenant has failed to follow the Rules of Procedure and breach of the principle of natural justice. The Rules of Procedure have been changed as of June 28, 2014. However, as the within application was filed prior to that date the old rules are applicable. The relevant rules are as follows:

RULE 4 – SERVING THE RESPONDENT'S EVIDENCE

4.1 (a) If the respondent intends to dispute an Application for Dispute Resolution, copies of all available documents, photographs, video or audio evidence the respondent intends to rely upon as evidence at the dispute resolution proceeding must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding as those days are defined in the "Definitions" part of the Rules of Procedure.

(b) If the date of the dispute resolution proceeding does not allow the five (5) day requirement in a) to be met, then all of the respondent's evidence must be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the dispute resolution proceeding.

(c) If copies of the respondent's evidence are not received by the Residential Tenancy Branch or served on the applicant as required, the Dispute Resolution Office must apply Rule 11.5 to evidence the respondent presents at the dispute resolution proceeding [Consideration of evidence not provided to the other party or the Residential Tenancy Branch in advance of the dispute resolution proceeding]

11.5 Consideration of evidence not provided to the other party or the Residential Tenancy Branch in advance of the dispute resolution proceeding

- a) At the dispute resolution proceeding a party may request that the arbitrator accept any evidence that was not provided to the other party or the Residential Tenancy Branch in advance of the dispute resolution proceeding as required by the Rules of Procedure and must satisfy the arbitrator that the evidence is relevant.
- b) The arbitrator may refuse to accept the evidence if the arbitrator determines that there has been a willful or recurring failure to comply with the Act or the Rules of Procedure or if for some other reason, the acceptance of the evidence would prejudice the other party, or result in a breach of the principles of natural justice.
- c) If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence and request that the matter be adjourned. The arbitrator must apply Rule 6.4 [criteria for granting an adjournment] and rule whether to adjourn the dispute resolution proceeding.

Rules 4.1 provides that the respondent shall serve copies of all available evidence on the applicant "as soon as possible" or at least 5 days before the dispute resolution hearing. The brochure setting out this requirement is included with every Application for Dispute Resolution. Presumably, the tenant had the form of tenancy agreement which she is relying on for over a year. The form of agreement is the most important item of evidence for tis case. While the tenant apologized for her failure to deliver a copy of the form of agreement to the landlords, the tenant failed to provide an adequate explanation as to why she failed to deliver a copy of this evidence to the landlord.

Rule 11.5 requires that an arbitrator consider whether this evidence should be admitted despite the fact that it was not provided to the applicant in advance. The evidence is relevant. The failure to provide the applicant with the form of agreement is suspicious. It gives the respondent an unfair advantage. The material was in the respondent's possession at all material times. I determined the failure was willful. Further, I determined the landlord has been prejudiced as it denied the landlord of the opportunity to present other evidence that might support the landlord's position.

I considered whether this problem could be remedied by an adjournment. However, I determined the landlord would be significantly prejudiced by an adjournment. The

earliest date the hearing could be reconvened would be in October. The landlords would be denied the opportunity to return to their home for a further two months. I determined there is a risk that damage may occur to the rental unit. I see no reason why the tenant should be rewarded for her failure to follow the Rules of Procedure by ordering an adjournment. To permit the admissibility of the tenant's form of tenancy agreement would result in denying the landlord's the principles of natural justice. Accordingly, I determined it was not appropriate to accept into evidence the tenant's version of the tenancy agreement.

I determined in June 2013 the parties signed a form of tenancy agreement in which the fixed term tenancy was to end on June 30, 2014 and the tenants were to vacate at that time. The tenant submitted that the box indicating it was a month to month had been whited out. It is not possible to determine that given the poor quality of the photocopies presented. I prefer the evidence of the landlord to that of the tenant. I accept the testimony of the landlords that they did not change the provisions of the form of agreement provided to the Residential Tenancy Branch relating to what was to happen at the expiry of the fixed term. I determined the parties agreed that at the expiry of the fixed term the tenancy would end and the tenant would vacate the rental unit.

Analysis - Order of Possession:

I determined the landlords are entitled to an Order for Possession. The rent has been paid until the end of August. It was accepted by the landlords "for use and occupation only." **Accordingly, I granted the landlord an Order for Possession effective August 31, 2014. I further ordered that the tenant pay to the landlord the sum of \$50 for the cost of the filing fee such sum may be deducted from the security deposit.**

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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: August 22, 2014

Residential Tenancy Branch

