



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, 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 10 day Notice to End Tenancy was sufficiently served on the Tenant by posting on December 2, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on December 29, 2014. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated December 2, 2014?
- b. Whether the tenant is entitled to a monetary order for the reduced value of the tenancy and if so how much?

Background and Evidence

The tenancy began on January 1, 2014. The tenancy agreement provided that the tenant(s) would pay rent of \$850 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$425 at the start of the tenancy.

Application to Cancel the 10 day Notice to End Tenancy:

The agent for the tenant did not dispute the rent has not been paid. He testified that the rent was not paid was because the landlord failed to get rid of a mice, racoon, and cockroach and bug infestation which has significantly reduced the enjoyment of the rental unit despite spraying on two occasions.

Section 26(1) provides as follows:

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. The tenant does not have a legal right to withhold the payment of the rent in a situation such as this. As a result I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice.

Order for Possession

The Residential Tenancy Act provides that where a landlord has made an oral request for an Order for Possession at a hearing where a dispute resolution officer has dismissed a tenant's application to set aside a Notice to End Tenancy, the dispute resolution officer must grant an Order for Possession. The landlord made this request at the hearing. As a result I granted the landlord an Order for Possession effective

January 15, 2015 (as requested by the agent for the tenant and agreed to by the landlord)..

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.

Application for a Monetary Order:

The Application for Dispute Resolution filed by the Tenant seeks a monetary order in the sum of \$5000. However, the tenant failed to present any supporting evidence. The agent for the tenant testified he has digital photographs. However, he has not given them to the landlord or to the Residential Tenancy Branch.

Rule 2.3 and 2.5 of the Dispute Resolution Rules of Procedure provide

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

2.5 Documents that must be submitted with an application for dispute resolution

To the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch, the applicant must submit to the Residential Tenancy Branch:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on at the hearing.

The only exception is when an application is subject to a time constraint, such as an application under *Residential Tenancy Act* section 38, 54 or 56 or an application under the *Manufactured Home Park Tenancy Act* section 47 or 49.

Analysis

I determined the tenant's application to cancel the 10 day Notice to End Tenancy and his application for a monetary order are not related to each other. Further, the tenant failed to comply with the Act by serving the Application for Dispute Resolution within 3 days of filing and failed to follow the Rules of Procedure by filing and serving a detailed calculation of any monetary claim made. **In the circumstances I determined that it was appropriate to dismiss the tenant's application for a monetary order with liberty to re-apply.**

The tenant has breached a number of rules set out in the Dispute Resolution Rules of Procedure. The tenant is encouraged to obtain legal assistance or talk to an information officer.

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: January 06, 2015

Residential Tenancy Branch

