



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act, (the “Act”), for a monetary order for money owed or compensation for damage or loss under the Act.

Both parties appeared.

Preliminary matter

The tenant writes in their application,

“the landlord evicted me from my residence on August 31, 2012 using section 47(k) of the RTA. She should have evicted me using section 49.6(b). I am seeking moving costs and compensation under section 51(1) and (2) of the RTA.”

[Reproduced a written]

On July 24, 2012, the parties attended a dispute resolution hearing. At the hearing the Arbitrator heard submission of both parties and on July 26, 2012, made the following finds in the decision,

“The tenant’s application to cancel the 1 Month Notice to End Tenancy for Cause issued on June 24, 2012, is dismissed.

I have determined that the landlord has submitted sufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47 of the Act.

The landlord has been granted an Order of possession that is effective **July 31, 2012, at 1 p.m.** This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.”

[Reproduced a written]

The tenant filed a Petition to the BC Supreme Court to have the decision made on July 26, 2012, set aside, and a stay pending appeal. On August 27, 2012, the BC Supreme Court dismissed the tenant’s petition.

Under the Residential Tenancy Act section 60 defines the latest time

60 (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

In this case, the tenancy legally ended on July 31, 2012, as that was the date ordered in the director's decision dated July 26, 2012. The BC Supreme Court upheld that decision and order when the tenant's petition was dismissed. The tenant filed their application for dispute resolution on August 29, 2014.

Although the landlord collected rent for August 2012, that rent was occupancy rent and the landlord was entitled to collect that money as the tenant had not complied with the order of possession by vacating the premises on July 31, 2012. After that date the tenant was overholding the premises merely as an occupant.

As a result, I find the tenant did not file their application within the 2 years of the date the tenancy ended, as the last possible day to file their application would have been July 30, 2014. Therefore, I dismiss the tenant's application.

Further, even if the tenant's application was filed within the permitted time under the legislation, which it was not. Their application for dispute resolution would not have been heard due to the legal principal of Res judicata.

On July 26, 2012, the Arbitrator determined that the tenancy ended pursuant to section 47 of the Act. The fact that the tenant does not agree with the decision and would rather have the tenancy end pursuant to section 49 of the Act, that is not for me to reconsider. Further, the tenant's petition to have that order of July 26, 2012, set aside was dismissed by the BC Supreme Court. Therefore, I find the matter of how the tenancy ended has already been heard and a decision made.

Conclusion

The tenant's application is dismissed.

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: March 19, 2015

Residential Tenancy Branch

