



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OLC, FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and to recover the fee for filing this Application.

At the hearing on March 10, 2015 the Tenant stated that the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail, on February 16, 2015. The Landlord acknowledged receiving these documents, although he does not recall if they were served by registered mail.

The Tenant submitted documents to the Residential Tenancy Branch on February 24, 2015. At the hearing on March 10, 2015 the Tenant stated that these documents were also sent to the Landlord, via registered mail, on February 16, 2015. The Landlord acknowledged receiving these documents and they were accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch on February 25, 2015. At the hearing on March 10, 2015 the Tenant stated that these documents were personally served to the Landlord on February 25, 2015. The Landlord acknowledged receiving these documents and they were accepted as evidence for these proceedings.

Although the documents submitted to the Residential Tenancy Branch on February 24, 2015 and February 25, 2015 were not served to the Landlord in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure, they were accepted as evidence as the hearing was adjourned, giving the Landlord ample time to consider the evidence.

At the hearing on March 10, 2015 the Landlord requested an adjournment as he would like to be represented by legal counsel and his legal counsel was not available to assist at the time and date of this hearing. The Tenant did not oppose the request for an adjournment and the adjournment was granted.

The Tenant submitted documents to the Residential Tenancy Branch on April 14, 2015 and she submitted photographs to the Residential Tenancy Branch on April 17, 2015. At the hearing on April 29, 2015 the Tenant stated that this evidence was personally served to the Landlord's wife on April 14, 2015.

At the hearing on April 29, 2015 the Landlord stated that he received a package of evidence on April 15, 2015 which contained photographs and some documents. He stated that he did not have that package with him at the time of the hearing so he is not certain what documents were in the package. As the Landlord acknowledged receiving documents and photographs on April 15, 2015 and he is unable to refute the Tenant's testimony regarding the nature of the documents served, the documents and photographs submitted to the Residential Tenancy Branch on April 14, 2015 and April 17, 2015 were accepted as evidence for these proceedings.

Both parties were represented at both hearings.

At the hearing on April 29, 2015 the Tenant advised that she has vacated the rental unit. As the rental unit has been vacated, the Tenant withdrew the application for an Order of Possession and an Order requiring the Landlord to comply with the *Act*. She stated that she still wishes to recover the fee she paid to file the Application for Dispute Resolution as she does not feel that the Notice to End Tenancy was served in accordance with the *Act*.

Preliminary Matter

On February 25, 2015 the Tenant submitted a Monetary Order Worksheet in which the Tenant indicates she is claiming compensation of \$1,800.00 and on April 14, 2015 the Tenant submitted a Monetary Order Worksheet in which the Tenant increased the amount of this claim to \$2,700.00. These claims appear to relate to repairs done to the rental unit and compensation for not being given proper notice to end the tenancy.

The Tenant stated that she amended the original Application for Dispute Resolution to include a claim for a monetary Order; however she acknowledged that she does not have a copy of an amended Application for Dispute Resolution and that she did not serve the Landlord with an amended Application for Dispute Resolution.

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure stipulates that any claim is limited to what is stated in the application. As The Tenant did not apply for a monetary Order in the original Application for Dispute Resolution, that issue is not being considered at these proceedings.

Rule 8.4 of the Residential Tenancy Branch Rules of Procedure require me to accept evidence only on the matters stated on the Application for Dispute Resolution unless a party applies to amend the Application to include related matters at the start of the dispute resolution proceeding and I allow the amendment. At the hearing on April 29,

2015 the Tenant applied to amend the application to include an application for a monetary Order.

At the hearing and in a written submission the Landlord opposed the amendment on the basis that the claims are without merit and, in any case, should be dealt with under a separate application.

At the hearing on April 29, 2015 the parties were advised that I was not allowing the Tenant to amend the Application for Dispute Resolution to include an application for a monetary Order. This decision was based on rule 2.3 of the Residential Tenancy Branch Rules of Procedure, which stipulates that claims made in an application must be related to each other.

I find that a claim for repairing the rental unit is not sufficiently related to the Tenant's application to set aside a Notice to End Tenancy and should not, therefore, be considered in the same proceedings.

I find that a claim for compensation for being given improper notice to end a tenancy should not be considered at the same time the merits of a Notice to End Tenancy is being considered. In the event the Landlord did not have grounds to end the tenancy with the Notice to End Tenancy that was served, the tenancy would continue and the Tenant would not be entitled to compensation as a result of the Notice.

I specifically note that even if the Tenant had included a claim for a monetary Order in the original Application for Dispute Resolution or she had properly amended the Application to include a claim for a monetary Order, I would not have considered the claim for a monetary Order at these proceedings, pursuant to rule 2.3 of the Residential Tenancy Branch Rules of Procedure, as that claim is not sufficiently related to the application to cancel the Notice to End Tenancy.

The Tenant retains the right to file another Application for Dispute Resolution in which she applies for financial compensation.

Issue(s) to be Decided

Is the Tenant entitled to recover the fee for filing this Application for Dispute Resolution?

Background and Evidence

Rather than participating in a hearing, the sole purpose of which is to determine whether the Tenant is entitled to recover the fee for filing this Application for Dispute Resolution, the Landlord offered to settle this sole remaining issue by paying the Tenant \$50.00.

The Tenant agreed that a \$50.00 payment would settle the remaining issue in dispute at this hearing.

Analysis

I find that the sole remaining issue in dispute at these proceedings has been settled in accordance the aforementioned terms.

Conclusion

On the basis of the settlement agreement reached by the parties, I grant the Tenant a monetary Order for \$50.00. In the event the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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: April 29, 2015

Residential Tenancy Branch

