



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, CNL, MNDC, LRE, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on June 29, 2015. The Tenant applied for the following reasons: to cancel a notice to end tenancy for cause and the Landlord’s use of the rental property; for more time to cancel a notice to end tenancy; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; to suspend or set conditions on the Landlord’s right to enter the rental unit; and, to recover the filing fee.

The Landlord and the Co-Landlord appeared for the hearing. The Tenant appeared for the hearing with a lawyer and explained that they also intended to call a witness for the hearing. Both Landlords and the Tenant provided affirmed testimony.

The Tenant testified that he served the Landlord with a copy of his Application and the Notice of Hearing documents by registered mail on July 6, 2015. The Tenant provided the Canada Post tracking number into oral evidence. The Co-Landlord confirmed receipt of the Tenant’s Application by registered mail and explained that he had not received the documents until a week prior to the hearing as they were away on vacation. However, I determined that the Tenant had served the documents for this hearing in accordance with Section 59(3) of the Act by registered mail.

I noted that both parties had submitted documentary evidence that had been served both to the Residential Tenancy Branch and to the other party late in accordance with the time limits set out in the Rules of Procedure. However, I did acknowledge that little time was left for the parties to serve evidence since the Tenant made the Application and the hearing was scheduled on July 3, 2015.

The Landlord explained that he had submitted photographic evidence for this file the day before this hearing which he intended to rely on. However, this evidence was not

before me at the time of the hearing. The Tenant's lawyer explained that he had only received portions of the Landlord's evidence a day before the hearing by text message but this did not give him enough time to consider it.

The Tenant's lawyer explained that the evidence that he had provided to the Residential Tenancy Branch was late because of the short time limit they had to provide this and he was unable to serve the Landlord by email as the Landlord did not provide an email address. However, I did inform the Tenant's lawyer that the Rules of Procedure and the Act do not allow service of evidence by e-mail unless receipt of it can be proved. The Co-Landlord denied receipt of the Tenant's evidence and the Tenant's lawyer explained that their evidence was essential in proving their case to have the notice cancelled.

Based on the foregoing, I find that the scheduling of this hearing by the Residential Tenancy Branch left insufficient time for the parties to exchange evidence properly between them. The Landlord bears the burden of proof in this case and therefore, I was not willing to continue the proceedings without having all of the Landlord's evidence before me. In the same respect, I was also not going to allow the Tenant to use evidence which the Landlord had not been given a sufficient opportunity to receive and review beforehand. Therefore, the only option that I could see in this case was to adjourn the matter to allow proper service of the evidence by both parties to avoid any prejudice to either party.

Before the matter was adjourned, the Tenant indicated that he was intending to vacate the rental unit at some point in the future. The parties agreed that this tenancy should end at some point. Therefore, I offered the parties an opportunity to mutually agree to end the tenancy and that the remaining matters would be dismissed with leave to re-apply as they could not be determined in this hearing based on the above evidence issues.

Settlement Agreement

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.

The parties had a lengthy discussion about a date to end the tenancy, turned their minds to compromise, and agreed to end the tenancy on **September 30, 2015** at which point the Tenant is required to vacate the rental suite. The Landlord is issued with an Order of Possession effective for August 31, 2015 at 1:00 p.m. This order may be filed and enforced in the Supreme Court of British Columbia as an order of that court if the

Tenant fails to vacate the rental unit in accordance with the above agreement. Copies of the order are attached to the Landlord's copy of this Decision.

However, the Landlord consented to the Tenant leaving earlier than September 30, 2015 as long as the Landlord is given **written** notice of the earlier departure date. The Tenant is still liable to pay rent and/or utilities for the time he is in occupancy of the rental unit.

The Landlords were informed of their remedies under the Act which can be used if the Tenant fails to pay rent. The rights and obligations of both parties in relation to vacating the rental unit and the returning of the security deposit at the end of the tenancy still apply.

As the parties decided to mutually agree to end the tenancy, the Tenant's Application to recover the filing fee is dismissed. The Tenant is at liberty to reapply for the remaining issues on his Application not dealt with during this hearing.

The parties confirmed during the hearing and at the end of the hearing that they had entered into this settlement agreement voluntarily and understood the full nature of the agreement and its meaning.

Conclusion

The parties mutually agreed to end the tenancy on September 30, 2015. The Tenant's Application to recover the filing fee is dismissed. The Tenant's remaining Application is dismissed with leave to re-apply as these matters were not determined in this hearing.

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: July 21, 2015

Residential Tenancy Branch

