



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OPL, OPR, OPC, MNR, MNSD, FF

Introduction

This hearing was convened in response to un-amended cross-applications of the parties. **The tenant** sought to cancel 1 and 2 Month Notices to End. **The landlord** sought an Order of Possession, a Monetary Order for unpaid rent, and to retain the tenancy deposits in partial satisfaction of the claims. Each party sought recovery of their filing fee.

Both parties appeared in the conference call hearing and participated with their submissions and testimony. The parties agreed to the receipt of evidence of the other, although the landlord claims the tenant did not provide them with a compact disc (CD) as claimed to have been delivered by the tenant with their packages of evidence. Regardless, the parties provided evidence in testimony. The tenant advised they vacated the rental unit at the end of September 2015. As a result, an Order of Possession is not necessary.

Issue(s) to be Decided

Are the Notices to End tenancy valid?

Is the tenant entitled to the monetary amount claimed?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The evidence of the parties is that the tenancy began in November 2008 and has since

ended. During the tenancy rent in the amount of \$700.00 was payable in advance on the first day of each month. At the outset of the tenancy the landlord collected a security deposit *and* a pet damage deposit from the tenant in the sum amount of \$700.00, retained in trust. The tenant claims they vacated September 30, 2015. The landlord submits the tenant vacated October 01, 2015 as the tenant did not return a phone call until that date, and as a result the landlord claims the tenant owes them rent for October 2015 in the amount of \$700.00.

On July 22, 2015 the landlord gave the tenant a 2 Month Notice to End for Landlord's Use with an effective date of September 30, 2015. The following day – on July 23, 2015 – the landlord gave the tenant a 1 Month Notice to end for Cause claiming the tenant engaged in *illegal activity* likely to damage the landlord's property or jeopardize the landlord's lawful right or interest, in operating an "illegal repair shop" on the residential property with the upstairs tenant during the summer (2015). The landlord provided photographs of the residential property purporting the illegal activity by the tenant. Solely within their application particulars the landlord states the tenant is breaching material terms of the tenancy contract, however does not include this reason for ending the tenancy on the Notice to End for Cause. The landlord seeks that the effective date of the 1 Month Notice to End of August 31, 2015 should be upheld with the tenancy ending on the basis of that Notice – rendering the 2 Month Notice to End for Landlord's Use moot - and therefore resulting in the tenant liable for September 2015 rent of \$700.00.

The tenant disputes the landlord's claims.

On July 22, 2015 the landlord gave the tenant a 2 Month Notice to End for Landlord's Use with an effective date of September 30, 2015. The following day – on July 23, 2015 – the landlord gave the tenant a 1 Month Notice to end for Cause claiming the tenant is *repeatedly late* in paying the rent, engaged in *illegal activity* likely to damage the landlord's property or jeopardize the landlord's lawful right or interest, in *operating an illegal repair shop* on the residential property with the upstairs tenant during the summer (2015), *significantly interfering* with the landlord by swearing at them, *seriously*

jeopardizing the safety or lawful right of the landlord; and, putting the landlord's property at *significant risk* . The landlord provided photographs of the residential property purporting their claims of cause to end the tenancy. Solely within their application, the landlord states the tenant is breaching material terms of the tenancy contract, however did not stipulate this reason for issuing the 1 Month Notice to End for Cause. The landlord seeks that the effective date of the 1 Month Notice to End - August 31, 2015 be upheld – rendering the 2 Month Notice to End for Landlord's Use ineffective to end the tenancy resulting in the tenant liable to satisfy September 2015 rent.

The tenant disputes the landlord's assertions. They testified they relied on the 2 Month Notice to End the tenancy as issued, and as a result relied on the corresponding compensation equivalent to one month's rent to satisfy the last month of occupancy – September 2015.

It was highlighted to the landlord they have the burden of proving they issued valid Notices to End. In respect to the 1 Month Notice for Cause the tenant disputes they engaged in illegal activities and placed the landlord's property at risk and the property remains intact. The landlord testified the tenant is involved in "facilitating and maintaining" an illegal repair shop at the rental unit along with the upstairs tenant, and family relation. The landlord provided a series of photographs showing the garage on the rental property rented as a storage area to the upstairs tenant. The photographs depict possessions of the tenant including a variety of tools and work benches. The tenant disputes participation in activities alleged by the landlord as illegal.

Analysis

References to relevant legislation can be accessed from the Residential Tenancy Branch website at www.gov.bc.ca/landlordtenant.

On preponderance of the relevant evidence in this matter I find that the tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use of Property. The tenant disputed initially disputed the Notice but did not provide any evidence why it

should be cancelled and ultimately vacated. As a result, I find the Notice to be valid and I uphold it.

I find the tenant was subsequently given a 1 Month Notice for Cause dated the following day – July 23, 2015. For this Notice to End I find that the landlord did not provide evidence to support their reason that the tenant has engaged in *illegal activity*. I have not been provided with evidence proving that any of the tenant's alleged activities were illegal, criminal in nature, or more sublimely: contrary to local government regulations or zoning usage. I find the landlord has provided insufficient evidence to support that the tenant has significantly interfered with the landlord, or adversely affected the security, safety or physical well-being of the upstairs occupant or the landlord, or jeopardized a lawful right or interest of the upstairs occupant or the landlord. I find the landlord has not provided evidence supporting the tenant damaged or likely would damage the landlord's property or jeopardize a right or interest of the landlord. Further, the landlord did not allege a breach of the tenancy agreement within their Notice to End, although available to them to do so. Therefore, I find the landlord's 1 Month Notice to End dated July 23, 2015 is not effective to have ended the tenancy. As a result, I hereby **cancel** the 1 Month Notice to End with the effect that the tenancy continued until the tenant vacated.

I accept the tenant has vacated, and I find that the landlord accepts it as well. I do not accept the landlord's evidence the tenant owes rent for October on the basis: *the tenant occupied the unit into October because of a phone call to the landlord on October 01, 2015*. The landlord's assertion is not a reasonable conclusion. I prefer the tenant's testimony they vacated September 30, 2015. As a result the landlord's claim for October rent in the amount of \$700.00 is **dismissed**.

As I have found the 1 Month Notice to End to be invalid, and have upheld the landlord's 2 month Notice to End, the tenant was entitled to compensation for receiving a valid Notice in accordance with Section 51(1) of the Act, equal to one month's rent under the tenancy agreement. I find the tenancy continued to the effective date of the 2 Month Notice of September 30, 2015 and the tenant accepted the monthly amount for rent for

September 2015 as their entitled compensation in accordance with Section 51 of the Act. Therefore, I find the tenant did not owe rent for September 2015 and the landlord's claim for September rent of \$700.00 is therefore **dismissed**. Effectively, the landlord's application is **dismissed** in its entirety, without leave to reapply.

In respect to the tenant's application, despite some of the claims provided by the tenant, they did not amend their application advancing a monetary claim. None the less, as they were partly successful in their application to cancel the landlord's Notice to End they are entitled to recover their filing fee.

In addition, Residential Tenancy Policy Guideline #17, in relevant part, states as follows:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The Arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for Arbitration for its return.

Residential Tenancy Policy Guideline #31, in relevant part, states that Pet damage deposits are generally treated the same as security deposits.

In this matter the landlord requested the retention of the security deposit and pet damage deposit in partial satisfaction of their monetary claim. The landlord's claim has been dismissed in its entirety without leave to reapply. I have not been provided with evidence the tenant's right to the return of their deposits has been extinguished. As a result, it is appropriate that I order the return of the tenant's deposits with interest in accordance with Residential Tenancy Policy Guideline #17. I so Order and factor the foregoing in the Monetary Order. None the less, it must be noted it remains available to the landlord to file an application seeking damages to the unit if they have proof.

Calculation for Monetary Order

Filing fee to tenant	50.00
<i>Security deposit and interest held in trust</i>	<i>350.67</i>
<i>Pet damage deposit and interest held in trust</i>	<i>350.67</i>
Total Monetary Award to tenant	\$ 751.34

Conclusion

The landlord's application has been dismissed.

The tenant's application has been successful, in relevant part.

I grant the tenant an Order under Section 67 of the Act for the amount of **\$751.34**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: October 09, 2015

Residential Tenancy Branch

