



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

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

Introduction

This hearing was convened in response to cross-applications of the parties. **The tenant** sought to cancel a 10 Day, 1 Month, and a 2 Month Notices to End, as well as a monetary Order for loss in respect to a plumbing invoice. **The landlord** sought an Order of Possession, a Monetary Order for unpaid rent, and to retain the tenancy security deposit in partial satisfaction of their claims. Both parties sought recovery of their respective filing fee.

Both parties appeared in the conference call hearing and participated with their submissions and testimony. The parties generally agreed to the receipt of evidence from the other. However, the landlord solely acknowledged receipt of the plumbing invoice from the tenant, and the tenant acknowledged receipt of the landlord's evidence. The tenant advised they vacated the rental unit on October 04, 2015. As a result, an Order of Possession is not necessary. As a further result I determined the contrasting testimony regarding evidence would not prejudice the rights of either party and the hearing proceeded on the merits of the applications. Regardless of the above, the parties were also permitted to provide evidence in testimony.

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 January 2008 and has since ended. During the tenancy rent in the amount of \$1200.00 was payable in advance on the first day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the sum amount of \$525.00, currently retained in trust. The tenant claims they vacated October 04, 2015 and left the unit keys in the unit. For purposes of this hearing the parties agreed the tenant is deemed to have vacated October 05, 2015. As a result of this determination by the parties they agree the tenant owes \$193.54 for over holding the unit into October 2015.

The parties agreed to resolve the tenant's claim for plumbing with the landlord and tenant agreeing to the landlord reimbursing the tenant \$150.00 for their monetary claim, and effectively settling the tenant's monetary claim. Despite the tenant vacating the unit they dispute the validity of the landlord's 1 Month Notice to end for Cause.

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 also gave the tenant a 10 Day Notice to End for Unpaid Rent on September 01, 2015. 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 ineffective - and therefore resulting in the tenant liable for September 2015 rent of \$1200.00.

The tenant disputes the landlord's claims. They testified that they relied on the 2 Month Notice to end the tenancy as it was initially issued, and as a result to satisfy the last month of occupancy – the month of September 2015. The tenant conceded they owe the landlord for over holding the unit into October 2015.

The parties were apprised that the landlord has the onus to prove they issued valid Notices to End. In respect to the 1 Month Notice for Cause the tenant testified they have never paid the rent late. The landlord testified they did not provide evidence the rent was repeatedly paid late prior to issuing the 1 Month Notice. The tenant testified they have never verbally abused the landlord, and the landlord testified they could not support this assertion or provided evidence in this respect. The landlord testified that the tenant utilized the garage/storage area as a “shop” and that the activity in the storage area jeopardized the residential property. The landlord claims the tenant used equipment in the storage area which placed the landlord's property at risk. The landlord provided photographs showing the storage area – which contains the tenant's possessions, including some tools. The parties discussed the landlord's claim that the tenant may have used a welder in the storage area. The tenant testified they own a “stick welder” but have never used it inside the property as they understand it would not be safe to do so. The landlord acknowledged they did not possess evidence the tenant has ever used their welder inside the property. The landlord further claims the tenant was engaged in *illegal activity* in using portions of the front and rear property to enact or make repairs to various machinery - which the landlord describes as *operating an illegal repair shop*, given the tenant did not obtain the required permissions from local government sanctioning the activity of repairs on the property. The landlord acknowledged not providing evidence as to the illegality, or criminality of the tenant's activities and how the tenant's conduct adversely impacted the landlord, or how it likely damaged the landlord's property. The landlord also acknowledged the tenant's conduct was being shared by the only other occupant of the property but did not provide if or

how the tenant's conduct adversely affected the other occupant. The landlord testified, and their evidence makes claims, the tenant's activities breached the tenancy agreement, however the landlord's Notice does not identify this as a reason for wanting to end the tenancy.

Analysis

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

I find the parties mutually agreed to resolve the tenant's monetary claim by the landlord paying the tenant the amount of **\$150.00** in full and final satisfaction.

On the 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 and I find that although initially disputed by the tenant they did not advance evidence for why it should be cancelled and ultimately the tenant vacated the rental unit shortly after the effective date of the Notice of September 30, 2015. Effectively I find the Notice to have been issued in good faith, and valid to end the tenancy.

I find the tenant was subsequently given a 1 Month Notice for Cause the following day. For this Notice to End I find that the landlord did not provide evidence to support their first reason that the tenant is repeatedly late paying rent. I find the landlord has not provided sufficient evidence to support that the tenant has *significantly* interfered with the landlord, or *adversely affected* the security, safety or physical well-being of another occupant or landlord, nor *jeopardized* a lawful right or interest of another occupant or the landlord. I find the landlord has not provided evidence supporting the tenant has engaged in *illegal activity* damaging or likely to damage the landlord's property or jeopardize a right or interest of the landlord. It must further be known that the landlord did not allege a breach of the tenancy agreement within their Notice to End. As a result of the above, I find the landlord's 1 Month Notice to End dated July 23, 2015 is not effective to have ended the tenancy August 31, 2015. I hereby **cancel** the 1 Month Notice to End rendering it of no effect with the result that the tenancy continued to the

effective date of the *previously issued* valid 2 Month Notice to End for Landlord's Use of Property: September 30, 2015.

As I have found the 1 Month Notice to End to be invalid, and the landlord's 2 month Notice to End as valid, the tenant is entitled to compensation for receiving a valid Notice in accordance with Section 51(1) of the Act. I find the tenant occupied the rental unit to the effective date of the 2 Month Notice and accepted the amount of the rent for September 2015 as their entitled compensation in accordance with the Act. Therefore, I find the tenant did not owe rent for September 2015 – rendering the landlord's 10 Day Notice to End for Unpaid dated September 01, 2015 as invalid, **cancelled**, and of no effect. The landlord's claim for September rent of \$1200.00 is **dismissed**. The landlord is entitled to the agreed amount for October 2015 over holding of **\$193.54**.

As the parties have been both partly successful in their claims they are each entitled to recover their filing fees – which mathematically *cancel out*. The landlord has applied to retain the security deposit to satisfy their claims; therefore it will be off-set from the awards made herein.

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.

I have not been provided with evidence the tenant's right to the return of their deposits has been extinguished. And, it must be noted it remains available to the landlord to file an application seeking damages to the unit if they have proof of such.

Calculation for Monetary Order

Landlord's award	193.54
<i>minus Tenant's award</i>	<i>-150.00</i>
Net award to landlord	\$ 43.54
<i>minus security deposit and interest held in trust</i>	<i>-532.88</i>
Balance to tenant via Monetary Order	\$ 489.34

Conclusion

The parties' respective applications have, in part, been granted.

I Order that the landlord may retain \$43.54 from the tenant's security deposit and interest of \$532.88 in satisfaction of their award and must return the remainder of \$489.34 to the tenant. **I grant** the tenant an Order under Section 67 of the Act for the remaining balance of **\$489.34**. 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 13, 2015

Residential Tenancy Branch

