



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC MNDC MNSD OPC FF

Introduction

The Notice to End Tenancy is dated August 31, 2015 to be effective September 30, 2015 and the tenant confirmed it was served by posting it on her door. The tenant /applicant gave evidence that they served the Application for Dispute Resolution by registered mail and provided tracking information showing the landlord received it. I find the documents were legally served for the purposes of this hearing. The hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;
- b) A monetary order for the return of the security deposit and compensation for money spent for the landlord and for damage to personal property; and
- c) Recovery of the filing fee

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief? Has the tenant proved on a balance of probabilities that they are entitled to the return of their security deposit and to compensation for money spent for the landlord and for loss and damage to personal property? If so, to how much have they proved entitlement?

Background and Evidence

The landlord did not attend the hearing. The tenant attended the hearing and was given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in April 2015, rent is \$7000 a month and a security deposit of \$350 was paid in April 2015.

This is a difficult situation. The tenant said the landlord sold the property after he served the Notice to End Tenancy because he was upset that she took a vacation while caring for his animals. There is no Notice to End Tenancy in evidence and the landlord did not attend the hearing so his written reasons for serving the Notice are unknown. The landlord provided no response or evidence supporting his Notice to End Tenancy.

The tenant said she lived in a trailer on two acres of property and the landlords lived in the main house. They left the home and asked the tenant to look after four animals that they had in their home. While she was doing this, they put the property up for sale and asked her to clean the carpets and try to eliminate animal smells at the times of showing their house. She said she spent \$50 to rent a carpet cleaner. She requests reimbursement of \$50; she said she sent the receipt to the landlord with no response.

She said she has spoken to the new owner and he is not interested in trying to end her tenancy at this time. She is requesting cancellation of the Notice to End Tenancy and the return of her security deposit as she is unsure if the new owner received this from her old landlord. She also requests \$100 for damage that the dogs did to her property. She brought the dogs to her home and area because they were doing a lot of damage to the landlord's property as they did not like being alone. She agreed that the landlord did not ask her to do this but she did it to be kind to the animals and protect the landlord's property. Included with the evidence are many emails and tracking information.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As discussed with the tenant in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. I find insufficient evidence of cause to end the tenancy and the landlord did not attend to support the Notice to End Tenancy. The Notice to End Tenancy dated August 31, 2015 is hereby set aside. The tenancy is reinstated and continues.

I find it is premature to order the return of the security deposit as the tenant is still occupying the premises. Under section 38 of the Act, the landlord has 15 days from the later of the tenant vacating and providing a forwarding address in writing to the landlord to deal with the security deposit. I dismiss this portion of the tenant's application. As pointed out to the tenant in the hearing, the purchaser should have had the tenant's security deposit plus any pro-rated rent transferred to him/her at closing of the transaction and he can check with his notary or lawyer to ensure this happened.

In respect to the tenant's claim for compensation, I find sufficient evidence that she was required to clean up after the dogs on at least one occasion and she spent \$50 for a steam cleaning machine. In support of her claim, I note emails from the female landlord on June 12, 2015 asking her to clean up rotted shrimp from the freezer prior to a

showing and on July 23, 2015 asking her to make sure the 'house is free of poop'. I find she is entitled to recover the \$50 she spent on the steam cleaning machine.

Regarding her claim for destruction and loss of her property, I find awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I find insufficient evidence that the landlord caused this loss or destruction by violation of the tenancy agreement or the *Act*. I find the tenant took the dogs onto her property through kindness and not because of any request of the landlord. The landlord asked for them to be cared for in their own home. I dismiss this portion of the tenant's claim.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is successful. The Notice to End Tenancy dated August 31, 2015 is cancelled and the tenancy is reinstated and continues.

I find the tenant entitled to a monetary order for \$50 reimbursement for rental of a steam cleaner and to recover her filing fee of \$50 as I find her application had merit. This monetary order for \$100 may be filed against her old landlord and enforced through the Small Claims Court of British Columbia.

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: November 05, 2015

Residential Tenancy Branch

