



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNC, OPR, MNR, MDSD & FF

Introduction

The Amended Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order cancelling a one month Notice to End Tenancy for cause dated August 25, 2015.
- b. An order cancelling a two month Notice to End Tenancy for landlord use of the rental unit dated August 27, 2015
- c. An order for more time to make this application.
- d. An order to recover the cost of the filing fee.

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession.
- b. A monetary order in the sum of \$2143 for unpaid rent and damages?
- c. An order to recover the cost of the filing fee?

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Background and Evidence

The tenancy started on July 13, 2015. The rent is \$900 per month payable on the first in advance day of each month. The tenant paid a security deposit of \$450 at the start of the tenancy.

Problems arose with the tenancy. The landlord served a one month Notice to End Tenancy and a two month Notice to End Tenancy at the end of August. The tenant testified she vacated the rental unit on October 25, 2015. The parties have completed a lengthy three day hearing before another arbitrator and are awaiting the results of that application.

Tenant's Application:

The tenant sought an order to amend her application to add a claim for the return of the security deposit. I determined it was not appropriate to grant the tenant's request to

amend her application for an order to recover her security deposit at this late stage as it would not provide the landlord with sufficient notice to the claim in order to properly prepare.. As a result I dismissed this request with liberty to re-apply.

The tenant has vacated the rental unit and has no interest in reinstating the tenancy. I ordered her application to cancel the one month Notice to End Tenancy and her application to cancel the two month Notice to End Tenancy be dismissed. I also dismissed the tenant's recover the cost of her filing fee as the tenant has not been successful with this application.

Landlord's Application:

The landlord testified he attempted to serve the tenant with a copy of the Landlord's Application for Dispute Resolution/Notice of Hearing by mailing, by registered mail to where the tenant resides on October 22, 2015. The Act provides that it is deemed received 5 days later. The tenant testified she vacated the rental unit on October 25, 2015 and she has not received a copy of the landlord's application. The landlord acknowledged the documents were returned to him. I determined the landlord failed to prove service on the tenant. As a result I ordered that the landlord's application be dismissed with liberty to re-apply.

Unfortunately the relationship between the parties is acrimonious. The tenant stated she wanted to bring a claim for the return of the security deposit. I referred the parties to section 38(1) of the Residential Tenancy Act and the need of the tenant to provide the landlord with her forwarding address in writing. Section 38(1) provides as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The tenant vacated the rental unit at the end of October. She has not provided the landlord with the address where she is presently living. She takes the position she has provided the landlord with her forwarding address in writing by using the address of the rental unit which she vacated. She states the landlord should send the security deposit to her through e-mail transfer. The tenant stated she has now provided Canada Post with instructions to forward all mail addressed to her that was to be delivered to that address. The landlord took the position this is not a forwarding address and he was not prepared to send the security deposit until she had provided a proper forwarding address. The within Application for Dispute Resolution was returned to him. The tenant stated she considered this harassment and she intended to report it to the police. She subsequently hung up before the hearing concluded. The issue of whether the tenant has provided a proper forwarding address is not before me and I have not made any determination on the subject.

Conclusion

I denied the tenant's request to include a claim to amend her application to include a claim to recover the security deposit. I dismissed the tenant's claim to cancel the one month Notice to End Tenancy and the two month Notice to End Tenancy as the tenant has vacated the rental unit and she has no desire to reinstate the tenancy. I dismissed the landlord's application with leave to re-apply as the landlord failed to prove he has properly served the tenant.

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 19, 2015

Residential Tenancy Branch

