



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MDSD & FF

Introduction

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

- a. An Order for Possession based on a one month Notice to End Tenancy dated May 24, 2016.
- b. An Order for Possession for non-payment of rent based on a 10 day Notice to End Tenancy dated June 2, 2016.
- c. A monetary order in the sum of \$2000 for unpaid rent and damages

The Application for Dispute Resolution filed by the Tenant is undated. However, the hearing letter is dated May 27, 2016. I infer that the date on the Notice should have been May 27, 2016. The Application but makes the following claims:

- a. An order to cancel the 10 day Notice to End Tenancy
- b. An order that the tenant recover the cost of the filing fee

The tenant stated it was her intention to apply to cancel the one month Notice to End Tenancy dated May 24, 2016.

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.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the one month Notice to End Tenancy was served on the Tenant by posting on May 24, 2016. I find that the 10 day Notice to End Tenancy was served on the Tenant by posting on June 2, 2016. I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was served on the landlord by mailing,

by express post on May 27, 2016. I find that the Application for Dispute Resolution filed by the Landlord was served on the Tenant by mailing, by registered mail to where the Tenant resides on June 9, 2016.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the Tenant is entitled to an order cancelling a one month Notice to End Tenancy dated May 24, 2016.
- b. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated June 2, 2016?
- c. Whether the tenant is entitled to recover the cost of the filing fee?
- d. Whether the landlord is entitled to an Order for Possession?
- e. Whether the landlord is entitled to A Monetary Order and if so how much?

Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on January 1, 2016, end on January 1, 2017 and continue on a month to month basis after that. The rent is \$2000 per month payable in advance on the first day of each month. The tenancy agreement states the tenant paid a security deposit of \$1000 and a pet damage deposit of \$400 on December 22, 2015.

The tenant(s) failed to pay the rent for May when due. The landlord served a 10 day Notice to End Tenancy on May 5, 2016. The rent was paid on May 16, 2016.

The Tenant failed to pay the rent for June when due. The landlord served a 10 day Notice to End Tenancy on June 2, 2016. The landlord produced a bank statement that indicates the rent was deposited into the landlord's account on June 12, 2016. The tenant(s) continues to live in the rental unit.

The tenant gave evidence as follows:

- She testified that she paid the landlord the rent for June on June 9, 2016. Later she changed this testimony stating she paid the landlord the rent for June on June 12, 2016.
- Problems pre-existed between the landlord and the Tenant.
- She denies that she was the person that told the Municipality of Surrey Bylaw Department that this was an illegal suite.
- She only has one arm as she was injured in an automobile accident and it is difficult for her to move.

Tenant's Application:

The one month Notice to End Tenancy relies on the following grounds:

- Rental unit/site must be vacated to comply with a government order

The Application for Dispute Resolution filed by the Tenant failed to provide that she was applying to cancel the one month Notice to End Tenancy.

Further, I determined the landlord has established sufficient grounds to end the tenancy on this basis. The landlord produced a letter from the City of Surrey indicating that the secondary suite is illegal because the landlord does not occupy the premises and ordering that the illegal dwelling must be removed from the Property including all cooking facilities must be removed and the electrical breaker controller the range receptacle must be removed. It further states that the City of Surrey will conduct a follow up inspection on July 15, 2016.

As a result I determined there are sufficient grounds to end the tenancy on the basis on the one month Notice to End Tenancy dated May 24, 2016.

Further, I determined the landlord has sufficient grounds to end the tenancy on the basis of the 10 day Notice to End Tenancy dated June 2, 2016. The Tenant testified the within application is the only Application for Dispute Resolution that she has filed. The Application for Dispute Resolution is undated. However, the hearing letter indicates it was filed on May 27, 2016. The landlord served a 10 day Notice to End Tenancy on June 2, 2016 by posting. The tenant failed to amend the within Application or file a new Application for Dispute Resolution seeking an order to cancel the June 2, 2016 Notice.

The Act provides where a landlord serves a Notice to End Tenancy by posting it is deemed received 3 days after it is posted. The Act provides that if the Tenant pays the arrears within 5 days after the Notice is received it is void. If the tenant pays the arrears after the 5 day period the landlord has an election to make. The landlord can accept the payment and reinstate the tenancy. Alternatively the landlord can accept the payment for "use and occupation" and the Tenant must vacate at the end of the rental payment period. In this case the tenant paid the arrears after the 5 days period. The landlord elected to accept the payment for "use and occupation only." The landlord is entitled to regain possession.

In summary I dismissed the Tenant's application including the cost of the filing fee.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession based on the one month Notice to End Tenancy and the 10 day Notice to End Tenancy. Accordingly, I granted the landlord an Order for Possession effective June 30, 2016.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee:

The rent for June has been paid. As a result I dismissed the landlord's application for a monetary order for non-payment of rent. The landlord has not claimed the cost of the filing fee. As a result no order is made with respect to the cost of the filing fee.

Conclusion:

I dismissed the Tenant's application to cancel the one month Notice to End Tenancy. The tenant failed to apply to cancel the 10 day Notice to End Tenancy dated June 2, 2016. The application would have been dismissed had she applied. I granted the landlord an Order for Possession effective June 30, 2016.

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: June 27, 2016

Residential Tenancy Branch