



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNR, LRE, MNDC, MNSD, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order cancelling a 2 month Notice to End Tenancy dated May 28, 2016
- b. An order to cancel the 10 day Notice to End Tenancy dated July 3, 2016
- c. A monetary order in the sum of \$4600.
- d. An order suspending or setting conditions on the landlord's right to enter the rental unit.
- e. An order for the return of the security deposit.
- f. 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.

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.

I find that the 2 month Notice to End Tenancy was personally served on the Tenants on May 28, 2016. I find that the 10 day Notice to End Tenancy was sufficiently served on the Tenants on July 3, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on June 16, 2016. I find that the Amended Application for Dispute Resolution was personally served on the landlord on July 7, 2016.

Preliminary Matter:

The tenants filed a letter dated July 12, 2016 stating they were claiming the following:

- \$3000 for the additional rent they would have to pay at their new place over 12 months
- \$1560 for additional utility costs
- \$1824 for taking time off work
- \$200 for cost of dispute including copying and photocopying.

The tenants failed to present evidence and failed to amend their Application for Dispute Resolution to make these claims. I determined it would be inappropriate to consider these claims as a result. The tenants have the right to re-apply. I limited my consideration to the monetary claims in the initial Application.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling a 2 month Notice to End Tenancy dated May 28, 2016?
- b. Whether the tenants are entitled to an order to cancelling the 10 day Notice to End Tenancy dated July 3, 2016?
- c. Whether the tenants are entitled to a monetary order and if so how much?
- d. Whether the tenants are entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit.
- e. Whether the tenants are entitled to an order for the return of the security deposit.
- f. Whether the tenants are entitled to an order to recover the cost of the filing fee.

Background and Evidence

The parties entered into a month to month written tenancy agreement that provided that the tenancy would start on October 1, 2013. The tenancy agreement provided that the tenant(s) would pay rent of \$1200 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$600 on September 17, 2013.

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

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

Section 51 of the Residential Tenancy Act provides as follows:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The landlord gave the following testimony.

- She is a partial owner of the rental property along with her two parents who were present at the hearing.
- The landlord's sister (daughter of the other two owners) had recently sold her condominium and the parents want her to move into the rental unit.
- The sister has agreed to move in.
- The landlord submits the of a 1tenants failed to file their Application for Dispute Resolution within the 15 days provided by the Act and as a result they are conclusively presumed to have accepted the end of the tenancy and must move out on the end of tenancy date. The Notice was personally served on the tenant on May 28, 2016. The 15 days would provide that it expired on June 12, 2016 (that day is a Sunday and the Act provides that it is extended to the next business day). All of the evidence suggests the tenants first made contact with the Branch on June 14, 2016.
- The form of Notice and the manner of service was proper.
- The tenants withheld the payment of rent for July. This prompted the service 10 day Notice to End Tenancy on July 3, 2016.

- The landlord acknowledged she is responsible for the payment of the equivalent of one month rent under section 51(1) of the Act. If the tenant withholding of the rent for July was to recover this right given to the Tenant then the tenants have accepted the 2 month Notice to End Tenancy.
- The tenants' claim for a monetary order in the sum of \$4600 is not authorized under the Act and not supported by the evidence.

The tenants testified as follows:

- The reason the landlord served the 2 month Notice to End Tenancy was a result of a dispute between the parties over the tenants keeping their window open at night to get fresh air and thus affecting the alarm system. I infer from this that they are contesting the good faith of the landlord.
- The tenants have found another rental unit and will be moving at the end of July 2016.
- The reason for the delay in filing the Application for Dispute resolution was because the tenants needed to get advice, they needed time to read the Residential Tenancy Act the two of them work long hours at different times.
- The tenants seek compensation for the financial inconvenience they have experienced.
- The landlord knew that they wanted the sister to move in but they delayed in advising the tenants.

Analysis:

After carefully considering all of the evidence I determined there is no basis for an order to cancel the 2 month Notice to End Tenancy for the following reasons:

- The landlord used the correct form and it was properly served on the Tenants.
- The tenants failed to file an Application for Dispute Resolution within the 15 days required under the Act and as a result they are conclusively presumed to have accepted the end of the tenancy as provided under the Act.
- The tenants failed to provide evidence of exceptional circumstances that would warrant the extension of time to file this application.
- The landlord has established sufficient cause on the merits. I am satisfied the landlord's parent are a part owner of the rental property. I determined they have a good faith intention for their other daughter to move into the basement suite. Her condominium is in the process of being sold. The landlords have a legal right to regain possession.
- I am satisfied the landlord has acted in good faith.

- The tenants have found alternative accommodation and are vacating the rental unit in any event. To make an order cancelling the Notice would significant prejudice the tenants.

As a result of my decision above I determined the tenants had the right under section 51(1.1) to withhold the rent for July in exchange for their right under this section for the equivalent of one month rent. I ordered that the 10 day Notice to End Tenancy be cancelled.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession effective July 31, 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.

Monetary Order:

I dismissed the tenants application for a monetary order. The Residential Tenancy Act attempts to balance the interests of landlords and tenants. The Act gives tenant the right to the equivalent of one month rent where a 2 month Notice has been served. The tenants have taken advantage of this right. There is no basis for the claim for 3 months rent and \$1000 for moving expenses as set out in the Application for Dispute Resolution. Further the tenant has failed to provide evidence as to the cost of moving.

I determined the tenants claim for the return of the security deposit is premature. As a result I dismissed that claim with liberty to re-apply.

I dismissed the tenants claim to set conditions on the landlord right to enter as the tenants failed to prove this claim.

The tenants have not been successful with this application and as a result I dismissed their application for the return of the cost of the filing fee.

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: July 22, 2016

Residential Tenancy Branch

