



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- a. An order to cancel the one month Notice to End Tenancy dated June 20, 2016 and setting the end of tenancy for July 31, 2016.
- b. An order that the tenant 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 for non-payment of rent
- b. A monetary order in the sum of \$3760 for unpaid rent and damages
- c. An order to retain the security deposit
- d. 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. The tenant did not produce any documentary evidence.

I find that the one month Notice to End Tenancy was personally served on the Tenant on June 20, 2016. I find that the 10 day Notice to End Tenancy dated July 2, 2016 was served on the Tenant by posting on July 2, 2016. I find that the Application for Dispute Resolution filed by the Tenant was personally served on the landlord in early July. I find that the Application for Dispute Resolution filed by the landlords was served on the Tenant by mailing, by registered mail to where the Tenant resides on July 13, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated June 20, 2016?
- b. Whether the Tenant is entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to an Order for Possession?
- d. Whether the landlord is entitled to A Monetary Order and if so how much?

- e. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- f. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenant testified she moved into the rental unit on May 1, 2016. The parties initially entered into a tenancy agreement that provide for a 6 month lease. They subsequently entered into a tenancy agreement that provided for a one year lease. Later, the parties agreed to a written tenancy agreement that provided that the tenancy would start on June 1, 2016. The tenancy agreement is unclear with respect to whether it is a fixed term tenancy that was to end on July 1, 2016 or whether it is month to month.

Initially the parties agreed to rent of \$1525. However, they later agreed to the presence of another person and the tenancy agreement was changed to provide for rent of \$1675 payable in advance on the first day of each month. . The tenancy agreement provided that the tenant paid a security deposit of \$762.50 on May 15, 2016.

The tenant(s) failed to pay the rent for the months of July 2016 (\$1225 is owed) and August 2016 (the sum of \$1675 is owed) and the sum of \$2900 remains owing.

She testified the landlord threatened her into signing the different tenancy agreements. The landlord denies this. In any event the grounds to end the tenancy pursuant to the one month Notice to End Tenancy and the 10 day Notice to End Tenancy would be the same no matter what the term is. The tenant(s) testified she is presently in hospital in Vancouver and is expected to be there for the next 3 months. She also testified the landlord phone the Ministry on her and the Ministry has taken away her children. The landlord denies this. Her nanny remains as the only person living in the rental unit.

Tenant's Application:

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

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- Tenant or a person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Tenant has engaged in illegal activity that has, or is likely to:
 - jeopardize a lawful right or interest of another occupant or the landlord
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so
- Tenant has assigned or sublet the rental unit/site without landlord's written consent

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy based on the one month Notice to End Tenancy. A tenant is responsible for the conduct of persons she has permitted on the rental property. DB testified he is the property Manager and is 70 years of age. He was working on the other side of the duplex when he heard a loud commotion. He attended to the other side (the rental unit) and a male and female guest of the tenant were involved in a loud dispute involving screaming, hollering and abusive language. He asked the guest to respect the neighbor who works a night shift and was sleeping. The male guest turned on him and approached in a threatening and intimidating manner accompanied by a considerable amount of abusive language. He continued to yell at DB and until he was a few inches away from him. They then went and turned then went and turned the radio on full blast. DB removed himself. The tenant testified they are guests and are not living in the rental unit. The Act provides that a tenant is responsible for the conduct of her guests.

Further, I am satisfied the tenant has breached a material term of the tenancy agreement by having a cat in the rental unit in contravention of the tenancy agreement. Finally, she has breached a material term of the tenancy agreement when she and/or her guests were smoking marijuana in the rental unit in contravention of the following clause "No smoking whatsoever inside the unit, or in the backyard, or in the carport. Smoking is only permitted on the front driveway. The tenant testified she is permitted to smoke marijuana for medical purposes. However, in my view this amounts to a breach of the No Smoking provision in the tenancy agreement.

As a result I dismissed the tenant's application to the one month cancel the Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice. I further order that the application of the tenant for the cost of the filing fee be dismissed.

The parties signed a Mutual Agreement to End the Tenancy as of September 1, 2016.

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.

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.

Landlord's Application:

Analysis - Order of Possession:

The landlord is entitled to an Order for Possession based on non-payment of rent. The tenant failed to pay the rent for July 2016 (\$1225 is owed) and August 2016 (the sum of \$1675 is owed) and the sum of \$2900 remains owing. The landlord has used the approved form.

The tenant failed to provide an explanation as to why she has failed to pay the rent. Section 26(1) provides as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant represented she could pay the arrears today. The landlord stated he was not interested in reinstating the tenancy. The Residential Tenancy Act no longer permits an arbitrator to grant an extension of time to pay the rent.

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant has not made an application to set aside the 10 day Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Accordingly, I granted the landlord an Order for Possession. The landlord stated he was prepared to allow her to stay until the end of August. As a result I set the effective date of the Order for Possession for August 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.

Analysis - Monetary Order and Cost of Filing fee:

The tenant failed to pay the rent for July 2016 (\$1225 is owed) and August 2016 (\$1675 is owed) and the sum of \$2900 remains owing.

I dismissed the claim to keep the security deposit as a separate claim on the basis that it will be used to cover the damage to the rental unit. The security deposit will be used to reduce the rent owing. However the landlord would have to file a new Application for Dispute Resolution to recover the cost of damage done to the rental unit.

I determined the landlord is entitled to a monetary order in the sum of \$2900 plus the sum of \$100 in respect of the filing fee for a total of \$3000.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$762.50. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to \$2237.50.

Conclusion:

I dismissed the Tenant's Application to cancel the one month Notice to End Tenancy and issued an Order for Possession effective August 31, 2016. I determined the Landlord has established a monetary order against the Tenant in the sum of \$3000. I ordered that the landlord shall retain the security deposit of \$762.50. I further ordered that the Tenant pay to the Landlord the sum of \$2237.50 in satisfaction of this claim.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: August 15, 2016

Residential Tenancy Branch

