



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MDSD & FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the 10 day Notice to End Tenancy dated September 2, 2016.

The tenant filed two amendments which claimed:

- a. Still suffering from injuries from fall in underground parking. The workmen put a carpet in area that had none (causing the fall from their neglect to remove. Have mobility problems, garbage had to dump be cause of disability. Move to create a hardship; lots of problems created by MG.
- b. Unauthorized entry into suite; items missing. Issued another eviction notice to me.

The Amendments do not make a claim for compensation. The Tenant confirmed at the hearing that she was not making a claim for compensation.

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 for unpaid rent
- 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 parties acknowledged they had received the documents of the other party.

I ordered that the claims made in the Amendments filed by the Tenant be severed as they do not relate to the issues initially claimed. The claims in the Amendments are dismissed with liberty to re-apply.

Rule 2.2, 2.3 and 6.2 of the Rules of Procedure provide as follows:

2.2 Identifying issues on the Application for Dispute Resolution

The claim is limited to what is stated in the application. See also Rule 6.2 [*What will be considered at a dispute resolution hearing*].

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

I determined it was appropriate to sever the claims made in the Tenant's Amendments for the following reasons:

- a. Those claims do not relate to the application to cancel a 10 day Notice to End Tenancy and the landlord's application for a monetary order and Order for Possession for non-payment of rent.
- b. The tenant alleged at the hearing the following
 - She has had no peaceful existence
 - There is mold in the rental unit that has caused her ill health.
 - The landlord has abused her
 - The landlord's workmen that stolen some of her belongings
 - The landlord or his agent is guilty of unauthorized entry.
 - The negligence of the landlord's agent have caused her injury as a result of a fall.

The Amendments filed by the Tenant do not make a claim for compensation. The Tenant has not filed a monetary order worksheet which sets out her claims.

The Rules of Procedure prove that I can only hear matters claimed in the Application. Thus, even if I heard the evidence of the Tenant relating to these matters I would not be permitted to grant compensation because the tenant failed to claim a monetary.

- c. Section 26(1) of the Residential Tenancy Act 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.

Thus the law provides that even if the tenant could prove these claims she is obligated to pay the rent and the landlord would be entitled to the orders sought.

- d. I determined that to proceed with the hearing of the tenant's claim in this hearing would result in a significant risk to the Tenant. The Tenant has failed to present sufficient evidence to prove many of these claims. Thus, even if the allegations are true there is a strong likelihood they may be dismissed for lack of proof.

The Tenant was extremely upset by this ruling. However, I determined it was in the interest of both parties and would better facilitate the determination on the merits if the Tenant's claims set out in her Amendments be dismissed with liberty to re-apply.

I find that the 10 Notice to End Tenancy was served on the Tenant by posting on September 13, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other by mailing, by registered mail to where the other party resides. The landlord produced a tracking number from the registered mail receipt. The tenant did not have her tracking number close at hand but the landlord acknowledged receipt of the same. 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 10 day Notice to End Tenancy dated September 2, 2016?
- b. Whether the landlord is entitled to an Order for Possession?

- c. Whether the landlord is entitled to A Monetary Order and if so how much?
- d. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- e. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The tenant entered into a tenancy agreement with the previous owner that provided that the tenancy would start on July 1, 2012. The tenant paid a security deposit of \$450. The present rent is \$926 per month payable in advance on the first day of each month.

The tenant has failed to pay the rent for September (\$476 is owed) and October (\$926 is owed) and the sum of \$1402 remains outstanding. The Tenant does not dispute the rent is owed. She testified her income has been significantly reduced because bureaucracy issues with her pensions. She expects that this will be rectified soon. She has asked the landlord for compassion but the landlord has refused.

The tenant further testified she is in ill health and her mobility is compromised because of the mold in the rental unit. She is not able to find alternative accommodation at the present time. She does not have friends or family she can stay with.

Tenant's Application:

Section 26(1) provides that the Tenant must pay the rent with due even where the landlord has failed to do what the landlord is required to do unless the Tenant first obtains an order from an arbitrator permitting the withholding of the rent.

I determined there is no basis for an order to cancel the Notice. It is on the correct government form. The Tenant does not dispute the rent is owed. The Residential Tenancy Act no longer permits an arbitrator to grant an extension of time to pay the rent unless the landlord consents. The landlord takes the position he is not prepared to grant an extension of time as the rent is 2 months in arrears..

As a result I ordered that the application be dismissed without leave to re-apply. The tenancy shall end.

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:

For the reasons set out above I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant's application to set aside the Notice to End Tenancy has been dismissed. 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. Normally an Order for Possession would set for 2 days after service. However, given the situation of the Tenant I ordered that the Order for Possession be set for 7 days after service on the Tenant.

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:

I determined the tenant has failed to pay the rent for the month(s) of September (\$476 is owed) and October (\$926 is owed) and the sum of \$1402 remains outstanding. I granted the landlord a monetary order in the sum of \$1402 plus the sum of \$100 in respect of the filing fee for a total of \$1502.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$450. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$1052.

Conclusion:

I ordered that the claim set out in the Tenant's two Amendments be severed and be dismissed with liberty to re-apply. I dismissed the Tenant's Application to cancel and 10 day Notice to End Tenancy and granted an Order for Possession on 7 days Notice. I ordered that the landlord shall retain the security deposit of \$450. I further ordered that the Tenant pay to the landlord the sum of \$1052.

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: October 31, 2016

Residential Tenancy Branch