



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord:	OPC MND MNSD MNDC FF
Tenant:	CNC OLC PSF RP RR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application for Dispute Resolution was received at the Residential Tenancy Branch on November 3, 2016 (the “Landlord’s Application”). The Landlord applied for the following relief pursuant to the *Act*:

- an order of possession based on a 1 Month Notice to End Tenancy for Cause, dated October 21, 2016 (the “1 Month Notice”);
- an monetary order for damage to the unit, site or property;
- an order permitting the Landlord to keep all or part of the security deposit or pet damage deposit;
- an order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was received at the Residential Tenancy Branch on October 13, 2016 (the “Tenant’s Application”). The Tenant applied for the following relief pursuant to the *Act*:

- an order cancelling the 1 Month Notice;
- an order that the Landlord comply with the *Act*, Regulations or a tenancy agreement;
- an order that the Landlord provide services or facilities required by the tenancy agreement or law;
- an order requiring the Landlord to make repairs to the unit, site or property;
- an order allowing the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and
- an order granting recovery of the filing fee.

The Landlord represented himself at the hearing, as did the Tenant. Both provided a solemn affirmation at the beginning of the hearing.

The Landlord testified that his Application package was served on the Tenant, in person, on November 3, 2016. The Tenant acknowledged receipt on that date. The Tenant testified that his Application package was served on the Landlord, in person, on October 21, 2016. The Landlord acknowledged receipt on that date. No further issues were raised with respect to services or receipt of these documents.

The parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The parties were advised that Rule 2.3 of the Residential Tenancy Branch Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. In these circumstances, I find it appropriate to exercise my discretion to sever the all but the Landlord's Application to end the tenancy based on the 1 Month Notice and the Tenant's Application to cancel the 1 Month Notice. The parties are granted leave to reapply for the remainder of the relief sought at a later date, as appropriate.

In addition, neither party provided a copy of the notice to end tenancy being relied upon. Both parties were ordered to provide copies of the notices to end tenancy being relied upon. Both provided copies of the 1 Month Notice, dated October 21, 2016. The Tenant included with his copy of the 1 Month Notice a letter in support of the Tenant's Application. This was not submitted or served in accordance with the Rules of Procedure and has not been considered.

Issues to be Decided

1. Is the Landlord entitled to an order of possession based the 1 Month Notice?
2. Is the Tenant entitled to an order cancelling the 1 Month Notice?
3. Is either party entitled to recover the filing fee?

Background and Evidence

Neither party submitted a copy of the tenancy agreement between them. However, they agreed the tenancy has been in place for approximately five years. Currently, rent in the amount of \$825.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$400.00 at the beginning of the tenancy.

As noted above, a copy of the 1 Month Notice was not available during the hearing. Accordingly, both parties were provided a full opportunity to give and respond to each other's evidence. Both parties confirmed service and receipt of the 1 Month Notice on October 21, 2016.

For the reasons that follow, it is not necessary for me to provide a summary of all the evidence provided during the hearing.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Section 47 of the *Act* permits a landlord to end a tenancy for cause for the reasons listed therein. On receipt of a notice to end tenancy for cause, a tenant has 10 days to file an application for dispute resolution. If a tenant does not file an application for dispute resolution within 10 days after receiving the notice to end tenancy for cause, he is conclusively presumed to have accepted the end of the tenancy.

In this case, the Landlord testified, and the Tenant acknowledged, that the 1 Month Notice was served on the Tenant on October 21, 2016. The 1 Month Notice clearly stated:

You have the right to dispute this Notice within 10 days after you receive it, by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

[Reproduced as written.]

Although the Tenant applied on October 13, 2016, to dispute another notice to end tenancy, he did not provide a copy of that notice with his documentary evidence. The Tenant did not, however, dispute the 1 Month Notice he received on October 21, 2016, upon which the Landlord relied. Neither did the Tenant amend the Tenant's Application to dispute the 1 Month Notice. Accordingly, pursuant to section 47(5) of the *Act*, I find the Tenant is conclusively presumed to have accepted the end of the tenancy. The Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

As the Landlord has been successful, I award \$100.00 in recovery of the filing fee paid to make the Landlord's Application, which I order may be deducted from the security deposit.

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after being served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

Subject to the exercise of my discretion to dismiss unrelated claims with leave to reapply, described under Preliminary and Procedural Matters, above, the Tenant's Application is dismissed, without leave to reapply.

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: December 08, 2016

Residential Tenancy Branch