



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, OLC, AAT, MNDC CNR ERP OPR, MNR & FF

Introduction

The Application for Dispute Resolutions filed by the Tenant in File #854992 makes the following claims:

- a. An order cancelling the 10 day Notice to End Tenancy dated October 4, 2016.
- b. An order for emergency repairs.

The Application for Dispute Resolution filed by the Tenant in File #853858 makes the following claims:

- a. An order disputing an additional rent increase.
- b. A monetary order in the sum of \$5936.30.
- c. An order to obtain a Tenant's Order for Possession.
- d. An order allowing access to (or from) the unit or site for the tenant or the tenant's guests

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 \$7500 for unpaid rent
- c. An order to retain the security deposit
- d. An order to recover the cost of the filing fee

The hearing was originally scheduled for November 3, 2016. It was then adjourned until January 3, 2017. The hearings were 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 10 day Notice to End Tenancy was served on the Tenant by posting on October 4, 2016.

I determined that the Tenant personally served a copy of the Application for Dispute Resolution on the landlord in File #854992 on October 15, 2016. This file deals with the Tenant's application to cancel the 10 day Notice to End Tenancy on October 4, 2016.

There is a dispute between the parties as to whether each has served a copy of the other two Applications for Dispute Resolution. The landlord did not raise this objection until well into the hearing on November 3, 2016 and after the Tenant had presented evidence of her monetary claims. He stated he had not received a copy of the Tenant's application or the evidence relied on by the Tenant. The tenant also stated she had not received a copy of the Application for Dispute Resolution filed by the Landlord.

In an Interim decision I adjourned the hearing to the next available date and I ordered that the each party serve a copy of the Application for Dispute Resolution and the evidence that they are relying on the other by registered mail and that they provide a copy of the registered mail receipt.

The landlord stated he did not serve a copy of the Application for Dispute Resolution on the Tenant by registered mail as provided in the Interim Order because he was waiting for the Tenant to serve a her applications on him. The Tenant testified she served a copy of the Application for Dispute Resolution by registered mail but it was returned to her. She then gave the materials to West Coast Bailiffs. They attempted to serve the materials on two occasions but the landlord was not home. The package was served on the landlord last night. The tenant failed to provide a copy of the receipts,

Preliminary Issue:

This is a very unfortunate situation. There is a great deal of animosity between the parties. It appears that both parties are trying to frustrate the other by failing to properly serve the other thus hindering their ability to defend the claims. The landlord submits the tenant is abusing the Residential Tenancy arbitration process as she has not paid the rent since she moved in in September.

I ordered that the application of the landlord in File #855372 be dismissed with leave to re-apply for the following reasons:

- The applicant has the burden of proof to establish he/she has properly served the other party.
- I determined the landlord failed to prove that he served copy of the Application for Dispute Resolution on the Tenant when it was initially filed. The Act provides that an Application for Dispute Resolution is to be served on the other party within 3 days of filing.
- Further, the landlord admitted he failed to comply with the Interim Order of November 3, 2016 and he failed to serve by the Landlord's Application for Dispute Resolution by

registered mail. I determined that I have no alternative to dismiss the landlord's application with leave to re-apply as the landlord failed to prove sufficient service.

I determined that the tenant's application in File #853858 should also be dismissed with leave to re-apply for the following reasons:

- The applicant has the burden of proof to establish service.
- The Tenant provided testimony that she served the Application for Dispute Resolution to an adult person who apparently resides with the landlord on September 13, 2016. The landlord denies receiving this. This is insufficient service as the Act requires personal service or service by registered mail where a party is making a claim for a monetary order.
- The Tenant failed to provide proof that she served the landlord in compliance with the Interim Order as she failed to provide receipt of service.
- I accept the evidence of the landlord that he was given a copy of the Application for Dispute Resolution and evidence relied on by the Tenant until the evening of January 3, 2016. The Rules of Procedure provide that evidence must be served at least 14 days prior to the hearing.
- I determined that the dismissal of the monetary claim with liberty to re-apply would best accomplish the goal of deciding the claim on its merits. When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires the following:
 - Proof that the damage or loss exists
 - Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
 - Verification of the Actual amount required to compensate for loss or to rectify the damage
 - Proof that the claimant followed section 7(2) of the Act by doing whatever is reasonable to minimize the damage or loss

The photocopies of the photographs produced by the Tenant are not of good quality.

The tenant has also failed to present sufficient evidence prove the quantum of her monetary claim.

- I determined that I am not seized on this matter and that should the Tenant make a further application the file can be assigned to any arbitrator.

Issue(s) to be Decided

I determined the only matter that is properly before me is the tenant's application in File #854992. 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 October 4, 2016
- b. Whether the tenant is entitled to an order for emergency repairs.

Background and Evidence

The representative of the landlord testified it was initially expected the Tenant could move into the rental unit in May. However, they were not able to complete the project as hoped and they did not get the occupancy permit until September 1, 2016. The landlord produced a tenancy agreement that states the rent was \$2000 and that the tenant will pay a security deposit of \$1000 on September 5, 2016. The tenant refused to sign this document stating this was not the agreement. The representative of the landlord testified oral agreement was that the tenant would pay rent of \$2000 per month payable in advance on the first day of each month. The tenant failed to pay the rent for September and October and the sum of \$4000 remains owed.

The tenant produced a tenancy agreement that states the rent was \$1100 per month and it was supposed to start of May 15, 2016. It shows a security deposit of \$550 paid on May 15, 2016. The landlord did not sign this document.

The tenant produced An Intent to Rent Form given to the Ministry that states the total rent was \$1100 and that the security deposit was \$550. It states the unit was to house 2 adults and 1 child. The tenant also produced a letter from the Ministry stating the client was given 3 cheques for May rent, June rent and the damage deposit for a total of \$1650.

The tenant submits the three cheques were cashed. Thus \$1100 should be applied to the rent once she moved in.

The Tenant also refers to a receipt from the landlord dated May 24, 2016 in the sum of \$422.50 that states "Labour toward Deposit to Hold Unit." She also produced an invoice claim \$457.50 for her co-tenants work and \$567.50 for her work on the property.

The tenant admits she has not paid the rent for December 2016 and January 2017. She testified the landlord has told the Ministry that the Tenant has not paid her personal portion of the rent and as a result the Ministry has refused to advance the portion of the rent the Ministry would normally advance.

The landlord disputes the Tenants evidence. He testified the Tenant broke into the rental unit in September, there is no tenancy agreement between the parties and the tenants have failed to pay the rent since they moved in.

Analysis:

I determined the parties do not have an agreement as to the amount the rent and as a consequence there is no tenancy agreement between them for the following reasons:

- The written tenancy agreement provided by both parties is at odds and is not signed by the other party. The tenancy agreement produced by the landlord indicates the rent is \$2000 per month but is not signed by either party. The tenancy agreement produced by the tenant is dated May 15, 2016 and shows the rent at \$1100 per month. The landlord did not sign this agreement.

- There is no history of the payment of rent for this property on which an arbitrator can refer to. The tenancy started in early September. The tenant states rent has been paid in advance or by applying money earned for work.
- Neither party provided sufficient evidence of an oral tenancy agreement.

The tenant failed to prove that the rent was \$1100. Such a rent would be significantly lower than market rent for a 2000 square foot accommodation even if it has not been completed. However, even if I accept the tenant's evidence that the rent is \$1100 per month I determined the tenant has failed to prove that she paid the rent for the period from September 2016 to January 2017 for the following reasons:

- The tenant relies on a receipt from the Elizabeth Fry office that purports to be rent confirmation for May rent and June rent and a damage deposit. On its face it refers to rent for a period prior to the start of the tenancy in early September. Even If tenant's testimony on this point is accept this would provide for \$1100 in rent (which would be the rent for September).
- The tenant also refers to a receipt in the sum of \$422.50 for "labour toward deposit to hold unit" given to TO and a second receipt in the sum \$567.50 given to AG with a similar notation. The tenant failed to provide the Branch with a copy of those receipts. The landlord testified those sums have been paid

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.

I determined the tenant failed to prove that the parties agreed those sums could be applied to outstanding rent. The tenant may have a claim against the landlord for work done but this cannot be applied to outstanding rent.

- The tenant failed to provide sufficient evidence to prove that the rent for October and November has been paid.
- The tenant admits the rent for December and January has not been paid. I do not accept the submission of the Tenant that the landlord's advice to the Ministry that she is not paying the rent amounts provides the Tenant an excuse not to pay the rent.
- The tenant failed to produce sufficient evidence that she attempted to pay her share of the rent for December 2016 and January 2017. .

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy based on non payment of rent.. I determined there is outstanding rent even if the tenant's testimony of the rent being \$1100 is accepted. As a result I

dismissed the tenant's application to cancel the Notice to End Tenancy. I order that the tenancy shall end.

I dismissed the claim for emergency repairs as the Tenant failed to provide sufficient proof. Further, the issue is moot as the tenancy is coming to an 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 on 7 days notice.

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.

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: January 04, 2017

Residential Tenancy Branch