



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, FF

Introduction

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

- a. An order to cancel the 10 day Notice to End Tenancy
- b. A Monetary order in the sum of \$900.
- c. A Tenant's Order of Possession
- d. An order authorizing the Tenant to change the locks.
- e. 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 representative of the landlord acknowledged the landlord has not submitted any documents to the Residential Tenancy Branch..

I find that a Notice to End Tenancy was served on the Tenant on January 23, 2017. However, the copy submitted by the Tenant was dated February 23, 2017. He testified this is the only Notice that he received. The representative of the landlord stated that she had in her possession a 10 day Notice to End Tenancy dated January 23, 2017. However, she failed to submit it. I ordered that the 10 day Notice to End Tenancy be amended so that it is dated January 23, 2017.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on January 24, 2017. 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 January 23, 2017?

- b. Whether the Tenant is entitled to a monetary order and if so how much?
- c. Whether the tenant is entitled to a Tenant's Order of Possession?
- d. Whether the Tenant is entitled to an order authorizing the Tenant to change the locks?
- e. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on July 28, 2016. The parties entered into a sub-let agreement that was to end on November 30, 2016. The rent was \$1375 per month. The tenant paid a security deposit of \$550 at the start of the tenancy.

The representative of the landlord testified the parties agreed that the rent was to be increased to \$1550 per month starting December 1, 2016. She stated there was an exchange of e-mails to this effect. The tenants denies this. The landlord failed to produce copies of those e-mails.

The representative of the landlord testified the tenant failed to pay all of the rent for January and approximately \$150 is owed. In addition the tenant owes the rent for February. The tenant produced evidence that he paid \$1400 by e-transfer being the rent for January 2017 on January 12, 2017. The tenant testified he is able to pay the rent for February now.

Analysis - Application to Cancel the 10 day Notice to End Tenancy

I determined that the landlord failed to prove that the parties agreed that the rent was to be increased to \$1550 per month. As a result I determined rent is \$1375.

Further, I find that the rent for January had been paid in full when the landlord served the 10 day Notice to End Tenancy on the Tenant on January 23, 2017. In such situations the Notice to End Tenancy is null and void.

I order the 10 day Notice to End Tenancy that was served on January 23, 2017 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. As the tenant has been successful with this application I ordered that the landlord shall pay to the Tenant the cost of the filing fee in the sum of \$100 such sum may be deducted from future rent.

Application for a monetary order:

I dismissed the tenant's application for a monetary order with liberty to re-apply. Rule 2.5 of the Rules of Procedure provides as follows:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch directly or through a Service BC office, the applicant must submit:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on at the hearing.

The tenant failed to provide a detailed calculation of any monetary claim being made including a monetary order worksheet. It is impossible to determine from the Application the details of the monetary claim. To permit the tenant to proceed with this claim at this time would result in a denial of natural justice as the landlord has not been given sufficient notice of the monetary claims being made. The tenant has liberty to re-apply.

The tenant testified part of the monetary claim relates to an illegal late fee charged by the landlord. As a courtesy to the parties I have enclosed section 7 of the Residential Tenancy Act Regulations which provides as follows:

Non-refundable fees charged by landlord

7 (1) A landlord may charge any of the following non-refundable fees:

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;
- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
- (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
- (f) a move-in or move-out fee charged by a strata corporation to the landlord;
- (g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I dismissed the claim to obtain a Tenant's Order of Possession as the Tenant is already in possession. I dismissed the claim for an order authorizing the Tenant to change the locks as the tenant failed to prove such an order is appropriate.

Conclusion:

In conclusion I ordered that the 10 day Notice to End Tenancy served on January 23, 2017 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. I ordered that the landlord pay to the Tenant the sum of \$100 being the cost of the filing fee such sum may be deducted from future rent. I

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.

dismissed the monetary claim with leave to re-apply. I dismissed the claim for a Tenant's Order of Possession and an order to change the locks.

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: February 20, 2017

Residential Tenancy Branch

