



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

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

- a. An order to cancel the one month Notice to End Tenancy
- b. 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.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord. 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
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on July 1, 2015. The present rent is \$771 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$375 and a pet damage deposit of \$375 at the start of the tenancy.

On January 2, 2017 the parties signed a Mutual Agreement to End the Tenancy on February 28, 2017. At the hearing the tenants stated they did not want an order to cancel a one month Notice to End Tenancy but were seeking an Order to set aside the Mutual Agreement to End the Tenancy. They testified they were coerced into signing the agreement. The tenant who took up residence immediately above them was constantly making complaints to the landlord. They signed the agreement to be cooperative with the landlord. They have since discovered that the tenant above them is mentally ill and that her complaints are unjustified. The landlord has not filed an application for an Order of Possession.

Settlement:

At the hearing the parties reached a settlement as to when to end the tenancy but they asked that I decide the issue of whether the Tenants are entitled to recover the cost of the filing fee.

The parties made the following settlement and they asked that I record the settlement pursuant to section 63(2) of the Residential Tenancy Act as follows:

- a. The parties mutually agree to end the tenancy on April 30, 2017.
- b. The parties request that the arbitrator issue an Order for Possession for that date.

As a result of the settlement I granted an Order for Possession for April 30, 2017.

The tenants 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.

I dismissed the application of the Tenant to recover the cost of the filing fee. I determined the tenant failed to present sufficient evidence to establish that they are entitled to recover the cost of the filing fee. The tenant's application sought to cancel a one month Notice. However, that was not what the tenant's requested in the hearing as they were seeking to an order to set aside a Mutual Agreement. The tenants were candid in stating they did not wish to live in the rental unit but they have been unable to find alternative accommodation given the low vacancy rate.

This decision is final and binding on the parties.

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: March 22, 2017

Residential Tenancy Branch