



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 landlord makes the following claims:

- a. An Order for Possession pursuant to a 2 month Notice to End Tenancy dated May 1, 2017 for landlord use.
- b. A monetary order in the sum of \$500 damages
- c. An order to retain the security deposit
- d. An order to recover the cost of the filing fee

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order cancelling the 2 month Notice to End Tenancy
- b. An order that the tenant 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 find that the 2 month Notice to End Tenancy was personally served on the Tenant on May 1, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other. 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 2 month Notice to End Tenancy dated May 1, 2017.
- b. Whether the tenant is entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to an Order for Possession?
- d. Whether the landlord is entitled to A Monetary Order and if so how much?

- e. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- f. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a in 2013. On August 3, 2016 the parties signed a written tenancy that provided the rent was \$1130 per month payable in advance on the first day of each month. Electricity and heat is not included in the rent. The tenancy agreement also included a provision that the tenant would pay 60% of the hydro and gas bills. The landlord lives in the basement suite. The utilities were on an equal payment plan. The tenant paid \$1275 in the winter and \$1250 in the summer. The landlord testified the equal payment plan was not sufficient to cover the utility bills. He was given a gas bill dated April 20, 2017 stating he was required to pay \$582.00 for May. The tenant's 60% share is \$321.

The landlord served a 2 month Notice to End on the Tenant in early May. He testified he intends to move into the rental unit in order to start renovation work. His daughter will be moving into the basement suite which he presently occupies.

Grounds for Termination:

The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides as follows:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

Tenant's Application::

After hearing all of the evidence I determined the landlord has a good faith intention to occupy the rental unit. I do not find this inconsistent with the desire of the landlord to renovate while he is living in the rental unit. I accept the landlord 's testimony that he intends to move into the rental unit.

As a result I dismissed the tenant's application to cancel the Notice. However, the landlord failed to give the tenant a clear 2 month notice as the Notice was not served until early May. The Act self-corrects an improperly dated Notice. As a result the effective date of the Notice to End Tenancy is July 31, 2017. It was reasonable for the Tenant to file this application given the failure to properly date the Notice. As a result I ordered the landlord to pay to the Tenant the cost of the filing fee in the sum of \$100.

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 effective July 31, 2017..

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 granted an Order of Possession effective July 31, 2017.

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 dismissed the landlord's claim for an monetary order in the sum of \$500. That claim is premature as the Tenant is still in the rental unit. The landlord has liberty to re-apply. I further dismissed the landlord's claim to recover the cost of the filing fee as the landlord

The parties participated in lengthy settlement discussions at the end of the hearing. The tenant is in ill health and is scheduled for surgery in July. The parties considered the possibility of extending the end of tenancy date and what the tenant was obliged to pay in the form of rent and utilities. Unfortunately the parties were not able to come to a settlement. The parties are encourage to continue settlement discussions with the hope of reaching a compromise that meets both parties' interests. .

Conclusion:

I granted an Order of Possession effective July 31, 2017. I dismissed the landlord's application for a monetary order with liberty to re-apply.

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: June 16, 2017

Residential Tenancy Branch