



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, MNSD, OLC, RP, OPR, MNR, MNSD & 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 dated April 24, 2017
- b. An order for emergency repairs
- c. An order for the return of all or part of his security deposit
- d. An order that the landlord comply with the Act, regulation and/or tenancy agreement
- e. An order for repairs
- f. A monetary order

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 \$4000 for unpaid rent
- c. 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 10 day Notice to End Tenancy dated April 24, 2017 and the 10 day Notice to End Tenancy dated June 9, 2017 was personally served on the Tenant by posting on April 24, 2017 and June 9, 2014 respectively.

Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenant was served on the landlord by posting. The landlord testified he never received the Application for Dispute Resolution. Posting is a sufficient method of service for the purpose of applying for an order to cancel the Notice to End Tenancy but is not a sufficient method of service for the purpose of obtaining a monetary order. In order to obtain a monetary order the application must be personally served or served by registered mail to where the other party resides.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order to cancel the 10 day Notice to End Tenancy?
- b. Whether the tenant is entitled to an order for emergency repairs and/or a repair order?
- c. Whether the tenant is entitled to an order for the return of his security deposit?
- d. Whether the tenant is entitled to an order that the landlord comply with the Act, regulation, and/or tenancy agreement?
- e. Whether the tenant is entitled to a monetary order?
- f. Whether the landlord is entitled to an Order for Possession?
- g. Whether the landlord is entitled to A Monetary Order and if so how much?
- h. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- i. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on March 15, 2017 and continue on a month to month basis. The rent was \$800 per month payable in advance on the 15th day of each month. The tenant paid a security deposit of \$400 at the start of the tenancy.

The tenant(s) testified that he withheld the rent because the landlord failed to make necessary repairs. The tenant failed to pay the rent for the period April 15, 2017 to May 14, 2017 (\$800 is owed), May 15, 2017 to June 14, 2017 (\$800 is owed), June 15, 2017 to July 14, 2017 (\$800 is owed), July 15, 2017 to August 14, 2017 (\$800 is owed) and August 15, 2017 to August 24, 2017 (8 days - \$206 is owed) and the sum of \$3406 remains outstanding.

The tenant(s) continues to reside in the rental unit.

Tenant's Application:

I determined the tenant has failed to sufficiently serve the landlord for the purpose of obtaining a monetary order. Further, the evidence relied on by the tenant was not legible. As a result I dismissed the tenant's application for a monetary order with liberty to re-apply.

The application to recover the security deposit is premature as the Act provides that a landlord has 15 days for the later of the end of the tenancy or when the landlord receives the tenant's forwarding address in writing to return the deposit, enter into an agreement in writing to keep the deposit, already have a monetary order or file an Application for Dispute Resolution to make a claim against the deposit. The tenant has the right to re-apply.

I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy. Section 26(1) of the Residential Tenancy Act provides as follow:

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.

The tenant does not have a legal right to withhold the rent without first obtaining an order from an arbitrator permitting him to do so.

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. The tenant failed to pay the rent when due for the last 5 months. The landlord used the approved government form. The tenant failed to file an Application for Dispute Resolution within 5 days of receiving the April 24, 2017 Notice to End Tenancy. As a result I dismissed the tenant's application to cancel the two Notices to End Tenancy. I order that the tenancy shall end on the date set out in the Notice.

I dismissed the tenant's application for a repair order, an order for emergency repairs and an order that the landlord comply with the Act, Regulations and/or tenancy agreement as the tenancy is coming to an end and those claims are moot.

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 2 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.

Landlord's Application - Order of Possession:

For the reasons set out above I determined the landlord was entitled to an Order of Possession. Accordingly, I granted the landlord an Order for Possession on 2 days notice.

Landlord's Application - Monetary Order and Cost of Filing fee:

I determined the tenant has failed to pay the rent for the period April 15, 2017 to May 14, 2017 (\$800 is owed), May 15, 2017 to June 14, 2017 (\$800 is owed), June 15, 2017 to July 14, 2017 (\$800 is owed), July 15, 2017 to August 14, 2017 (\$800 is owed) and August 15, 2017 to August 24, 2017 (8 days - \$206 is owed) and the sum of \$3406 remains outstanding.

I granted the landlord a monetary order in the sum of \$3406 plus the sum of \$100 in respect of the filing fee for a total of \$3506.

Conclusion:

I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy and I granted an Order of Possession on 2 days Notice. I dismissed the Tenant's application for a monetary order with liberty to re-apply. I ordered that the tenant pay to the landlord the sum of \$3506.

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.

This decision is final and binding on both 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: August 22, 2017

Residential Tenancy Branch