



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes CNR, CNC, MNDC, FF, MND, MNDC MNSD, OPC

The Application for Dispute Resolution filed by the tenant in the Application for Dispute Resolution filed on June 20, 2017 makes the following claims:

- a. An order to cancel the one month Notice to End Tenancy dated June 5, 2017
- b. An order for the cost of emergency repairs
- c. An order for repairs
- d. A monetary order in the sum of \$30,000
- e. An order to suspend or set conditions on the landlord's right to enter the rental unit
- f. An order to recover the cost of the filing fee.

The Application for Dispute Resolution filed by the Tenant on July 13, 2017 makes the following claims:

- a. An order to cancel the 10 day Notice to End Tenancy dated July 2, 2017 for unpaid rent.
- b. An order to cancel the one month Notice to End Tenancy dated June 5, 2017
August 6, 2015
- c. An order for repairs.
- d. A monetary order in the sum of \$35,000
- e. An order that the tenant recover the cost of the filing fee

The Application for Dispute Resolution filed by the landlord on June 20, 2017 makes the following claims::

- a. An Order for Possession for cause
- b. A monetary order in the sum of \$5000
- c. An order to retain the security deposit
- d. An order to recover the cost of the filing fee

The landlord filled an Amendment to the Application for Dispute Resolution on August 7, 2017.that claimed an additional \$15,000 monetary.

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 relevant to the issues in these proceedings. .

I find that the one month Notice to End Tenancy was served on the Tenant by posting on June 5, 2017. I find that the 10 day Notice to End Tenancy for non-payment of rent was served on the Tenant by posting on July 2, 2017. I find that the landlord served the Application for Dispute Resolution by mailing, by registered mail to where tenant resides on June 27, 2017. I find the Tenant sufficiently served the Application for Dispute Resolution filed on July 13, 2017 as the landlord has served documents disputing the tenants' claims.

Preliminary Matter:

The tenant testified she was not able to serve the Application for Dispute Resolution filed on June 20, 2017 and as a result she filed a second application. As the tenant failed to served the Application I ordered that application filed on June 20, 2017 be dismissed. The tenant has liberty to re-apply with respect to the monetary claims.

Rule 2.3 of the Rules of Procedure provide as follows:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

There is a great deal of animosity between the parties. I determined the most important issue to be determined in these proceedings is whether there are grounds to end the tenancy. The monetary claims raised by both parties are extensive and each party has had less than 6 weeks to prepare a defense to those claims. These monetary claims are not related to the tenant's claims to cancel a 10 day Notice to End Tenancy, a one month Notice to End Tenancy and the landlord's application for an Order of Possession for cause. The evidence filed by both parties relating to the monetary claims is deficient. I determined that it was appropriate to exercise my discretion under Rule 2.3 to dismiss the following claims with leave to re-apply:

- The Tenant's Application for a monetary order in the sum of \$35,000. The jurisdiction of the Residential Tenancy Branch has recently been extended to \$35,000.
- The Landlord's application contained in his original application for a monetary order in the sum of \$5000 and an order to retain the security deposit..
- The Landlord's Application for a monetary order contained in the Amendment to an Application for Dispute Resolution in the sum of \$15,000

Issue(s) to be Decided:

The issues to be decided in this hearing are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated July 2, 2017?

- b. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated June 5, 2017?
- c. Whether the tenant is entitled to recover the cost of the filing fee?
- d. Whether the landlord is entitled to an Order for Possession for cause?
- e. 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 October 11, 2014. The rent was originally set at \$1500 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$750 and a pet damage deposit of \$750 at the start of the tenancy. The rent has been increased by \$200 although the tenant alleges this is an illegal rent increase. The landlord submits the tenant agreed to the increase in writing.

Tenant's Application to Cancel the 10 day Notice to End Tenancy::

I determined the tenant is entitled to an order to cancel the 10 day Notice to End Tenancy for unpaid rent. The landlord served the 10 day Notice to End Tenancy on July 2, 2017 by posting. It is deemed received 3 days later. The tenant paid the rent on July 8, 2017. The Act provides that if the tenant pays the rent within 5 days the Notice is void. I determined the rent was paid with 5 days of receipt and as a result the 10 day Notice to End Tenancy is void.

Tenant's Application to Cancel the One month Notice to End Tenancy dated June 5, 2017.:

The landlord served a one month Notice to End Tenancy on the Tenant by posting on June 5, 2017. The Tenant has 10 days in which to file an Application for Dispute Resolution and a further 3 days after receiving the Application for Dispute Resolution from the Registry to serve it on the landlord. The original Application for Dispute Resolution was filed within the 10 day period. However, she failed to serve the Application within the time period required by the Act. The second Application for Dispute Resolution was filed on July 13, 2017 which is over a month after she received it and after the 10 day period required by the Act. I determined it was appropriate in the circumstances of this case to grant the tenant an extension of time to file the Application to cancel the one month Notice to End Tenancy so that it could be heard on the merits in this hearing

Grounds for Termination:

The one month Notice to End Tenancy dated June 5, 2017 raises the following grounds:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord

- Tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
 - jeopardize a lawful right or interest of another occupant or the landlord
- Tenant has not done required repairs of damage to the unit/site
- Tenant has assigned or sublet the rental unit/site without landlord's written consent

The landlord seeks to end the tenancy based on the following evidence:

- The tenant has acted aggressively towards him and his father and has yelled and screamed at them on many occasions.
- The tenant or a person permitted on the property by the tenant threatened to break his legs
- A male friend of the tenant in her presence who identified himself as her boyfriend threatened the landlord including a statement "You don't know me, You don't want to know me.
- The police have been called on a number of occasions and they have requested that they be called so that they can accompany him to the rental unit when he has to attend.
- Witness #1 testified that she lives in the downstairs suite. Her enjoyment of the rental property has been significantly interfered with and unreasonable disturbed by fights which occur on a weekly basis. The police have been called to attend to these disturbances. They occurred in the morning, afternoon and more often after 8:00 p.m.
- Witness #1 attempted to give evidence about the tenant's conduct relating to the her mail. I ruled that evidence was inadmissible because it related to conduct that occurred after the date on the Notice to End Tenancy.
- The landlord relies on a warning letter dated June 1, 2017.

The tenant testified as follows:

- She is a mother with two children in their late teens who want to remain in the rental unit.
- She is scheduled for an operation.
- She acknowledged there had been arguments with her troublesome teenagers but question why Witness #1 did not advise her of the complaint. Witness #1 disputed this saying she did advise her.
- She acknowledged losing her temper and swearing at the landlord's father and telling him to get off the property because he failed to give Notice. She later testified she apologized and hugged him.
- She disputed that she had assigned the rental unit as friends had moved in with the consent of the landlord but she always lived in the rental unit.
- She is a good tenant and paid her rent on time.

Analysis:

After carefully considering all of the evidence I determined the landlord has established sufficient grounds to end the tenancy for the following reasons:

- I determined the tenant has significantly interfered with and unreasonably disturbed the downstairs tenant. The downstairs tenant testified hearing excessive noise and arguments from the tenant's unit on a on a weekly basis. The tenant acknowledged her arguments with her troublesome teenagers.
- I determined the tenant has significantly interfered with and unreasonably disturbed the landlord by her abusive and vulgar conduct directed the landlord and his father.
- I determined the tenant and/or person permitted on the property has directly and impliedly threatened to cause physical harm to the landlord. This is totally unacceptable.
- The relationship between the parties has deteriorated to such an extent that the police have had to accompany the landlord when he goes to the property.

Given my determination above it is not necessary for me to consider the other grounds in the Notice to End Tenancy.

Determination and Orders:

I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the one month Notice to End Tenancy dated June 5, 2017. I order that the tenancy shall end on the date set out in the Notice. I further order that the application of the tenant for the cost of the filing fee be dismissed. As the tenancy is coming to an end I determined the tenant's application for a repair order is moot and as a result it is dismissed.

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. The rent has been paid to the end of August. I set the effective date of the Order of Possession for August 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:

For the reasons set out above I determined the landlord is entitled to an Order of Possession effective August 31, 2017. As the landlord has been successful in this application I ordered the tenant pay to the landlord the sum of \$100 for the cost of the landlord's filing fee such sum may be deducted from the security deposit.

Conclusion:

I dismissed the claims of both parties for a monetary order and an order for the return of the security deposit with liberty to re-apply as those claims were not related to the cross-claims dealing with the end of the tenancy. I dismissed the tenant's claim to cancel the one month Notice to End Tenancy. I granted an Order of Possession effective August 31, 2017.

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: August 24, 2017

Residential Tenancy Branch