



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, OPR, OPC, MNR, MDSD & FF

Introduction

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

- a. An order to cancel the one month Notice to End Tenancy dated July 31, 2017
- b. An order to cancel the 10 day Notice to End Tenancy dated August 1, 2017
- c. A monetary order in the sum of \$1000 to recover a rent increase not permitted by the Act

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 \$1200 for unpaid rent and damages
- c. An order to retain the security deposit
- d. 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 parties acknowledged they had received the documents of the other party.

I find that the one month Notice to End Tenancy was personally served on the Tenant on July 31, 2017. I find that the 10 day Notice to End Tenancy was served on the Tenant by posting on August 1, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by each party was sufficiently serve on the other.

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 dated July 31, 2017?
- b. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated August 1, 2017?
- c. Whether the tenant is entitled to a monetary order and if so how much?
- d. Whether the landlord is entitled to an Order for Possession?
- e. Whether the landlord is entitled to A Monetary Order and if so how much?
- f. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- g. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

Both parties agree the rent was to be \$1200 per month payable in a advance. The tenant paid a security deposit of \$600 prior to the start of the tenancy. The tenancy started on June 1, 2017. The tenant paid \$1200 in rent for June and July.

However, there is a great deal of dispute on the evidence. The landlord testified the rent was to be paid on the last day of the previous month. The tenant testified it was to be paid on the first day of each month. There is a dispute as to whether the tenancy agreement is oral or in writing. The tenant testified that she paid \$1000 in rent for August and \$1000 in rent for September. The landlord testified no rent was paid for those months. The tenant refers to a receipt indicting the tenant paid \$1000 for August. The landlord testified the receipt is fraudulent and was not the type that she uses. It is very difficult to make a determination as the quality of the photocopy of all receipts presented is very poor.

The landlord presented evidence relating to alleged misconduct that took place in August. I advised the landlord that evidence was not admissible to determine whether there are grounds to end the tenancy pursuant to a one month Notice to End Tenancy dated on July 31, 2017.

The parties testified that in early September a flood has caused significant damage that will require renovation work.

Analysis:

In Faryna v. Chorny, [1952] 2 D.L.R. 354, the B.C. Court of Appeal set out the following test for assessing credibility:

“The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal

demeanour of the particular witness carries conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. (page 357)”

Tenant’s Application to Cancel the 10 day Notice to End Tenancy

After carefully considering all of the evidence I determine the parties entered into a tenancy agreement in which the tenant agreed to pay rent of \$1200 per month payable in advance on the last day of the previous month. I note the Application for Dispute Resolution filed by the tenant does not dispute when the Notice alleges the rent was owed but disputes the amount stated that was owing (\$1200) was the wrong amount. She testified she paid \$1000 for August 2017. The requirement that the rent be paid at the end of the previous month is consistent with the conduct of the parties and the Notices that were issued.

The 10 day Notice to End Tenancy was served by posting on August 1, 2017. It is deemed received 3 days later. The 10 day Notice to End Tenancy alleges \$1200 is owed. The tenant testified she paid \$1000 and relies on a receipt to support this claim. Given the poor quality of the photocopy it is impossible to determine whether the receipt was properly signed by the landlord. However, even if the tenant’s evidence is accepted she owes \$200 is rent for August 2017.

I determined the landlord has sufficient grounds to end the tenancy on the basis of non-payment of rent. The landlord sufficiently served the 10 day Notice to End Tenancy by posting. There is outstanding rent. The landlord used the approved form. I determined it was not necessary to determine how much rent is owed for August for the purposes of determining whether the Notice to End Tenancy gave the landlord grounds to end the tenancy as the tenant’s evidence acknowledges she owes \$200 for that month.

I dismissed the tenant’s application to cancel the 10 day Notice to End Tenancy.

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.

Tenant's Application to Cancel the one month Notice to End Tenancy dated July 31, 2017

Given my determination above I determined that it was not necessary or appropriate to consider the tenant's application to cancel the one month Notice to End Tenancy. Much of the evidence is in dispute with each party accusing the other of lying.. The landlord served the one month Notice to End Tenancy on July 31, 2017 and purported to set the end of tenancy date for August 31, 2017. Even if the landlord was successful with respect to this Notice it would only be effective for the end of September as I determined the rental payment period was the last day of each month. The landlord must give a tenant a clear month notice. Thus to be effective for the end of August, the landlord would have had to have serve the tenant prior to the last day of July. The tenancy will come to an end prior to that date.

I dismissed the tenant's application for a monetary order as the tenant failed to present sufficient proof to establish a claim against the landlord.

Landlord's Application - Order of Possession:

For the reasons set out above I determine the landlord was entitled to an Order of Possession on 2 days Notice.

Analysis - Monetary Order and Cost of Filing fee:

I am not able to determine whether the tenant owes \$200 in rent or \$1200 in rent for August given the poor quality of the photocopies presented. At the very least the tenant owes \$200. I order that the Tenant pay to the landlord the sum of \$200 plus \$100 for the cost of the filing fee for a total of \$300.

I ordered that the landlord retains the right to file a new Application for Dispute Resolution claiming that the tenant owes a further \$1000 for August as I have not determined this issue on the merits. The landlord did not make a claim for non payment of rent for September and that issue is not before me.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$600. I ordered the landlord may retain \$300 of the security deposit in satisfaction of her claim in this matter leaving a balance of \$300.

Conclusion:

In summary 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 determined it was not appropriate to consider the tenant's application to cancel the one month Notice to End Tenancy as the tenancy will be coming to an end. I granted the landlord a monetary order in the sum of \$300 and ordered that the landlord shall deduct this sum from the security deposit leaving a balance of \$300. The landlord has the right to file a new Application for Dispute Resolution claiming a further \$1000 in rent for August as I was not able to make a determination on the merits on that issue.

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: September 12, 2017

Residential Tenancy Branch