



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, 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 August 10, 2017
- b. An order that the tenant recover the cost of the filing fee

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 \$930
- 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 one month Notice to End Tenancy was served on the Tenant by posting on August 10, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by the tenants was served on the landlord by courier on August 14, 2017. The landlord testified that although he filed the landlord's Application for Dispute Resolution on August 31, 2017 he did not serve the Application until he sent it by registered mail on October 6 2017.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated August 10, 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 tenancy agreement that provided that the tenancy would start on September 1, 2016. The rent is \$1800 per month payable on the first day of each month. The tenants paid a security deposit of \$900 at the start of the tenancy.

The tenant(s) gave the landlord a one month notice that set the end of tenancy for October 31, 2017. They have paid the rent for October and vacated the rental unit on October 15, 2017. They stated that they no longer have any interest in an order cancelling the one month notice and reinstating the tenancy.

Tenant's Application:

As the tenants no longer wish to dispute the Notice to End Tenancy I ordered that the tenant(s) application be dismissed without leave to re-apply.

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 for October has been paid. I set the effective date of the Order of Possession for October 31, 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.

Landlord's Application - Order of Possession:

Section 59(3) provides that an applicant must give a copy of the Application for Dispute Resolution to the respondents within 3 days of filing the Application for Dispute Resolution. The landlord misunderstood his obligations under the Act and failed to serve the Application until serving it by registered mail on October 6, 2017.

In the circumstances I determined it was appropriate to dismiss the landlord's application with liberty to re-apply for the following reasons:

- The landlord failed to serve it within 3 days as set out in the Act.
- It is not necessary to consider the landlord's application for an Order of Possession and an Order of Possession has been granted in the context of the tenant(s) claim.
- It is unclear from reading the Application for Dispute Resolution what monetary claims are being made by the landlord. The Application for Dispute Resolution claims \$930. However, the landlord failed to file a monetary order worksheet and failed to provide sufficient particulars so that one can determine exactly what claims are being made.
- I accept the submission of the tenant(s) that they have not been given sufficient notice of the claims being made so that they can properly defend themselves.

Conclusion:

In summary I dismissed the tenant(s) application to cancel the one month Notice to End Tenancy and to recover the cost of the filing fee without leave to re-apply. I granted an Order of Possession effective October 31, 2017. I dismissed the landlord's claim with leave to re-apply.

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: October 24, 2017

Residential Tenancy Branch