



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF MNDC OLC

Introduction

This hearing addressed the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's Notice to End Tenancy for Cause pursuant to section 47;
- an Order for the landlord to comply with section 62 of the *Act*;
- a Monetary Order as compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72.

Only tenant D.S. appeared at the hearing. D.S. confirmed that he had authority to speak on behalf of co-tenant, T.S. The tenant was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant provided undisputed testimony that the tenants served the landlord in person with the tenants' Application for Dispute in person on August 8, 2017. Pursuant to section 89 & 90 of the *Act*, the landlord is deemed to have been served with the tenants' application for dispute on August 8, 2017.

The tenant confirmed that he and his roommate had received a 1 Month Notice to End Tenancy for Cause in person on August 1, 2017. Pursuant to sections 88 & 90 of the *Act*, I find that the tenants were served with both notices in accordance with the *Act* on August 1, 2017.

Following opening remarks, tenant D.S., stated that he wished to amend the tenants' application for a monetary order from \$680.00 to \$510.00. As the landlord would not be

prejudiced by this request, I amend the tenants' application to reflect this change pursuant to section 64(3)(c) of the *Act*.

Issue(s) to be Decided

Can the tenants cancel the landlord's notice to end tenancy? If not, should an order of possession be issued?

Are the tenants entitled to a monetary order for loss under the *Act*?

Should the landlord be directed to comply with the *Act*?

Are the tenants entitled to a return of the filing fee?

Background and Evidence

Undisputed testimony provided to the hearing by tenant, D.S., explained that this tenancy began in January 2017. Rent was \$950.00 per month and a security deposit of \$475.00 collected at the outset of the tenancy continues to be held by the landlord.

The tenants have applied to cancel the landlord's notice to end tenancy for cause. Tenant D.S. explained that he believes the notice was issued without merit. The tenants have also applied for a monetary order of \$510.00, plus a return of the filing fee.

Tenant D.S. explained that he and his roommate would be vacating the rental unit on November 1, 2017 and were no longer pursuing an Order directing the landlord to comply with the *Act*. The tenant said that he would like to focus the hearing on the tenants' application for a monetary order.

During the course of the hearing, tenant D.S., explained that he was seeking a monetary order of \$510.00. He said this figure represented work that he missed on August 8, 2017 when he was required to attend the *Residential Tenancy Branch* for 3 hours to file the paperwork associated with the Notice to End Tenancy that the tenants received. In addition, tenant D.S., sought a return of half-a-day's wages for the time he had to miss work to attend the hearing on October 19, 2017. The tenant said that he felt the landlord's Notice to End Tenancy was an illegal eviction, which caused him unnecessary hardship, and took away from the time he spent at work.

Analysis

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the 1 Month Notice. Based on the undisputed testimony provided to the hearing by tenant D.S., I find that the 1 Month Notice to End Tenancy was served on the tenants on August 1, 2017. The tenants disputed this notice on August 8, 2017. The tenants have therefore applied to dispute this notice within the time frame provided by section 47 of the *Act*.

Because the landlord did not attend the hearing and provided no explanation of any of the evidence submitted as part of their evidentiary package, I find the landlord has failed to satisfy the burden of proof and I therefore allow the tenants' application to cancel the 1 Month Notice.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove entitlement to a claim for a monetary award.

Tenant D.S. explained that he sought a monetary order of \$510.00 in respect to the wages that he had lost on August 8, 2017 attending the *Residential Tenancy Branch* to file paperwork to dispute the landlord's notice to end tenancy, along with the wages he lost attending the hearing on August 19, 2017.

While I appreciate the time and efforts that were undertaken by tenant D.S. to dispute the landlord's notice to end tenancy, numerous avenues of dispute are available to a person seeking to cancel a landlord's notice to end tenancy. Notably, one can apply for dispute resolution online, or one can attend a Service B.C. location. There is no requirement to attend the office of the *Residential Tenancy Branch*. Furthermore, I am only entitled to award a monetary order under section 67 of the *Act*. This requires that an applicant prove the existence of the damage/loss, stemming *directly* from a violation of the agreement or a contravention of the *Act* on the part of the other party. A landlord is entitled to apply for an end of tenancy, much in the same manner that a tenant is

entitled to dispute this application. The landlord has not violated the *Act* by serving the tenants with a notice to the end tenancy. The tenants may find the landlord's application to be frivolous; however, little evidence was presented at the hearing that the landlord had violated the tenancy agreement or contravened the *Act*. For these reasons the tenants' application for a monetary award is dismissed.

As the tenants were successful in cancelling the landlord's notice to end tenancy, I find that pursuant to section 72 of the *Act* that they are entitled to a return of the filing fee.

Conclusion

The tenants were successful in their application to cancel the landlord's notice to end tenancy for cause. The landlord's 1 Month Notice of August 1, 2017 is dismissed.

This tenancy continues until ended in accordance with the *Act*.

I issue a monetary order in the tenants favour in the amount of \$100.00 for a return of their filing fee.

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 19, 2017

Residential Tenancy Branch