



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MDSD & FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the 10 day Notice to End Tenancy dated August 1, 2017

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 \$3985 for unpaid rent
- 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.

I find that the 10 day Notice to End Tenancy was served on the Tenant by mailing, by registered mail to where the tenant resides on August 7, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by each party was sufficiently served on the other as each acknowledged service.

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 1, 2017?
- b. Whether the landlord is entitled to an Order for Possession?
- c. Whether the landlord is entitled to A Monetary Order and if so how much?

- d. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- e. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on June 27, 2016 and end on June 27, 2017. The rent is \$1400 per month payable on the 27th day of each month. The tenant paid a security deposit of \$700 at the start of the tenancy.

The landlord testified the tenant was late paying the rent for March, April and May and she determined that she no longer wished the tenant to remain a tenant.

At the beginning of May the landlord had a conversation with the Tenant to see whether he intended to stay after June 27, 2017 or if we could possibly have the property for personal use. A couple of weeks later she left a message on his phone informing him that we no longer intended to use the property for personal use.

The landlord sent an e-mail dated May 17, 2017 stating they needed the Tenant to vacate the rental unit at the end of the rental term for personal use. However, the landlord refers to an e-mail dated May 29, 2017 that stated the following:

- That she did not issue a 2 month Notice to End Tenancy as their plans had changed and they were no longer going to use the rental unit for personal use.
- She had previously left a message on the tenant's phone stating they would not be using the property for personal use.

The Tenant responded to the landlord with an e-mail dated May 29, 2017 stating that the May 17, 2017 e-mail is the one that matters.

On May 31, 2017 the landlord and the Tenant meet. The landlord testified that intended to serve the Tenant with a one month Notice to End Tenancy for repeated late payment of rent if the parties were not able to enter in a Mutual Agreement to End the Tenancy. After discussion the parties signed a Mutual Agreement to End the Tenancy effective July 23, 2017.

On June 2, 2017 the landlord e-mailed the tenant a copy of the Mutual Agreement.

The landlord contacted the tenant on July 11, 2017 to confirm whether the tenant was moving. The tenant stated he needed to stay to the end of the month. The tenant paid

\$450 by bank e-transfer being the rent for the period from July 23, 2017 to July 31, 2017. The tenant paid the rent for August. He has refused to move.

The tenant acknowledges he has not paid the rent for September 2017 and October 2017 and the sum of \$2800 is owed. The tenant testified there was an agreement with the landlord that he could stay for the period July 1, 2017 to July 23, 2017 rent free in consideration for his claim for the "equivalent of one month rent" that he would be entitled to where the landlord ends the tenancy for "personal use."

Analysis:

After carefully considering all of the evidence I determined the Tenant failed to prove there was an agreement that he did not have to pay the rent for the period June 27, 2017 to July 23, 2017 and as a result the tenant owes the sum of \$1185 for that period for the following reasons:

- The landlord did not serve a 2 month Notice to End Tenancy in the approved form. The obligation to pay the "equivalent of 2 months notice" is triggered by the service of a 2 month notice in the approved form and not a statement in an e-mail stating the landlord wishes to regain the rental unit for personal use.
- I accept the evidence of the landlord and the documentary evidence presented that prior to the signing of the Mutual Agreement to End the Tenancy on May 31, 2017 that the landlord advised the Tenant they no longer intended to use the rental unit for personal use. They further advised they wished to regain possession of the rental unit and they intended to serve a one month Notice to End Tenancy for repeated late payment of rent if they were not able to make an agreement with the tenant to end the tenancy.
- That the landlord did not have a legal obligation to pay the equivalent of one month notice based on the service of a notice or the Mutual Agreement to End the Tenancy..
- On May 31, 2017 the parties signed a Mutual Agreement to end the Tenancy effective July 23, 2017. The document does not indicate the tenant could live there rent free. Further, there is insufficient evidence in the form of e-mails or other documents made around that time to corroborate the tenant's testimony that the landlord agreed he could remain in the rental unit rent free for that period. The landlord testified there was no such agreement. The tenant failed to prove such an agreement.

Tenant's Application:

For the reasons set out above I determined there is no basis to cancel the 10 day Notice to End Tenancy. It was on the approved form. I determined the tenant failed to pay all of the rent for July and the tenant owes \$1185 for the period from June 27, 2017 to July 31, 2017. As a result I dismissed the tenant's application to cancel the Notice to End Tenancy. I order that the tenancy shall end.

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.

Landlord's Application - Order of Possession:

For the reasons set out above I determined the landlord is entitled to an Order of Possession.

Analysis - Monetary Order and Cost of Filing fee:

I determined the tenant has failed to pay the rent for the period June 27, 2017 to July 23, 2017 (\$1185 is owed), September 2017 (\$1400 is owed) and October 2017 (\$1400 is owed) and the sum of \$3985 remains outstanding. I determined the landlord has given sufficient notice of their intention to claim for all of last month as provided in the Application for Dispute Resolution. I granted the landlord a monetary order in the sum of \$3985 plus the sum of \$100 in respect of the filing fee for a total of \$4085.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$700. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$3385.

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.

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 ordered that landlord may retain the security deposit of \$700. I further ordered that the Tenant pay to the Landlord the sum of \$3385.

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 25, 2017

Residential Tenancy Branch