



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, PSF, MT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant requested an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on August 22, 2017 (the "Notice"), an Order that the Landlord provide services or facilities, and more time to dispute the Notice.

The hearing was conducted by teleconference on November 27, 2017. Only the Tenant called into the hearing. He gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified that he served the Landlord with the Notice of Hearing and his Application on September 8, 2017 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. The Landlord did not attend the hearing.

Introduced in evidence was a copy of a letter from the Landlord's lawyer to the Tenant confirming that the tenancy to which this application relates ended by mutual agreement. This letter further provides that the parties entered into a new tenancy agreement; a copy of the agreement was also provided in evidence, although it was difficult to read.

The Tenant confirmed that he signed the agreement and understood it was for a further fixed term such that he was no longer being evicted. He also stated that he signed the new agreement under duress as he was afraid of being evicted.

I find it likely that the Landlord did not attend the hearing, as the validity of the Notice was no longer at issue as the parties entered into a new tenancy agreement.

As explained during the hearing, one of the principles of natural justice is that a party to a dispute has the right to know the claim against them and the opportunity to attend a hearing and present their response to such claims. In the case before me the Tenant applied to dispute a notice to end a tenancy. That tenancy ended when the parties entered into a new tenancy agreement. As such, the issues raised in the application are no longer applicable as that tenancy has ended. Accordingly, the Tenant's Application filed September 6, 2017 is dismissed.

The Tenant stated he had concerns with some of the terms of the new tenancy agreement. The parties are reminded that they are not able to contract out of the *Residential Tenancy Act* and all tenancy agreements must comply with the *Act*. Should any clauses in the agreement not be in compliance, the Tenant is at liberty to make an application pursuant to section 62(3) that the Landlord comply with the

Residential Tenancy Act and the *Residential Tenancy Regulation*. The Tenant must make further application and give the Landlord proper notice of his claims in this regard.

Although not before me, the new agreement appears to provide for a security deposit which is in excess of that permitted by section 19; which reads as follows:

Limits on amount of deposits

- 19** (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.
- (2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Further, the agreement appears to include a vacate clause at the end of the fixed term. The parties are cautioned that on October 26, 2017, the B.C. government introduced changes to the *Residential Tenancy Act* related to the use of a vacate clause in fixed term tenancy agreements. These changes are expected to come into effect and will apply to new and existing tenancy agreements. Further information can be found at:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/news>

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: November 27, 2017

Residential Tenancy Branch