



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes: CNL, FF

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel a one month Notice to End Tenancy
- b. A Tenant's Order of Possession

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondent. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on September 8, 2017. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated?
- b. Whether the tenant is entitled to a tenant's Order of Possession?

Background and Evidence:

The tenancy began on January 1, 2015. The tenancy agreement provided that the tenant(s) would pay rent of \$1300 per month payable in advance on the first day of each month.

In early June the landlord obtained an Order of Possession. The tenant testified the landlord failed to properly serve her and she was not aware of the proceedings. The tenant's application for review was dismissed in a decision dated July 4, 2017.

On September 9, 2017 the bailiff appeared with a Writ of Possession and indicated they were there to enforce the Order of Possession. The tenant obtained a stay of proceeding from the Supreme Court of British Columbia. The bailiffs returned on October 9, 2017 to enforce the Order of Possession. The tenant testified she did not have enough money to apply for a stay of execution the second time.

The tenant stated she wants to make a claim against the landlord for compensation for her losses.

Analysis:

I dismissed the Tenant's application to cancel a one month Notice to End Tenancy and a Tenant's Order of Possession. Those issues were dealt with in the previous arbitration filed by the landlord and the dismissal of the Tenant's application for review. An arbitrator cannot make an order that dealt with the same issues unless the previous decision and order were set aside either by review or judicial review. The tenant is no longer in the rental unit and in the situation it is not appropriate to grant a tenant's Order of Possession as third party rights could be affected.

The tenant testified she intends to seek compensation from the landlord for her losses. The tenant did not include that claim as part of the Application for Dispute Resolution and cannot be considered by an arbitrator. If the tenant chooses to pursue this claim she must file a new Application for Dispute Resolution that identifies her claim and properly serve the landlord.

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: November 29, 2017

Residential Tenancy Branch