



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes CNR, RR
FFL, MNR-S, OPR

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order to cancel the 10 day Notice to End Tenancy dated September 2, 2017
- b. A monetary order in the sum of \$1000 for a reduction of rent.

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 \$3200 for unpaid rent and damages
- 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 10 day Notice to End Tenancy was served on the Tenant by mailing, by registered mail to where the tenant resides on September 27, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was served on the Tenant by mailing, by registered mail to where the Tenant resides on November 18, 2017. I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was served on the landlord by mailing, by registered mail to where the landlord resides on October 5, 2017. With respect to each of the applicant's claims I find as follows:

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 September 2, 2017?
- b. Whether the tenant is entitled to a monetary order and if so how much?
- 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 one year fixed term written tenancy agreement that provided that the tenancy would start on December 1, 2016 and end on December 1, 2017 and become month to month after the fixed term. February 1, 2012. The rent is \$1600 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$800 and a pet damage deposit of \$500 shortly after the start of the tenancy.

The tenant(s) failed to pay the rent for the months of August, September, October, November and December and the sum of \$8000 remains owing.

The tenant(s) continues to reside in the rental unit. However, she testified she has moved most of her belongings and will be out of the rental unit shortly. The parties agreed they would meet on Saturday, December 16, 2017 at the residence at 10:30 a.m. and the tenant would return the keys.

Tenant's Application to Cancel the 10 day Notice to End Tenancy:

I dismissed the Tenant's application to cancel the 10 day Notice to End Tenancy without liberty to re-apply. The Notice was on the approved government form. The Tenant acknowledged the non-payment of rent. She testified she was entitled to a reduction of rent because of deficiencies in the rental unit. Section 26(1) of the Act provides as follows:

"Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent."

I determined there was no basis for an order cancelling the 10 day Notice to End Tenancy and this claim is 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 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.

Tenant's Application for a Reduction of Rent and Monetary Order:

The tenant sought a reduction of rent because of deficiencies in the rental unit. The landlord objected on the basis that she failed to provide sufficient particulars which would give them a sufficient opportunity to defend themselves. I agree with the submission of the landlord. I ordered that the application of the tenant for a monetary order and a reduction of rent be dismissed with liberty to re-apply.

Landlord's Application - Order of Possession:

For the reasons set out above I granted an Order of Possession on 2 days notice.

Analysis - Monetary Order and Cost of Filing fee:

I determined the tenant has failed to pay the rent for the month(s) of August, September, October, November and December 2017 and October and the sum of \$8000 remains outstanding. I granted the landlord a monetary order in the sum of \$8000 plus the sum of \$100 in respect of the filing fee for a total of \$8100.

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.

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: December 14, 2017

Residential Tenancy Branch