



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TSAWWASSEN FIRST NATION
and [tenant name suppressed to protect privacy]

AMENDED DECISION

Dispute Codes: MNR OPR MNDC FF

Introduction:

Both parties made applications and attended the hearing and gave sworn testimony. The landlord provided evidence that they served the Notice to End Tenancy dated September 6, 2017 to be effective September 16, 2017 by email and **by** a professional process serving company. The tenant denied receiving it personally from the process server although **she** had signed Proof of Service on September 6 **at** 7:55 p.m. She said she got the email copy. The landlord served their Application for Dispute Resolution by registered mail but it was returned unclaimed from the postal service. The tenant served her application personally to the office of the landlord. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. Although the tenant denied receiving the landlord's application, I find she was sufficiently served pursuant to section 71 of the Act **as she had knowledge of the facts and date and time of the hearing which was scheduled at the same time as her application.** The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for unpaid rent;
- b) An Order of Possession pursuant to sections 46 and 55; and
- c) An order to recover the filing fee pursuant to Section 72.

The tenant applies pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- d) To cancel a Notice to End Tenancy for unpaid rent;
- e) For an extension of time to make this Application pursuant to section 66
- f) To suspend and set limits on the landlord's entry into the suite pursuant to section 29;
- g) To receive compensation for work done as agreed.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is unpaid rent and the amount owed? If so, are they entitled to an Order of Possession and to recover filing fees?

Is the tenant entitled to any relief? Should the time to file her application to dispute the Notice to End Tenancy be extended? Should the landlord's right to enter the unit be suspended or limited? Has she proved on the balance of probabilities that she is entitled to compensation for work done on her unit?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in July 1, 2017 on a six month fixed term, that rent is \$1700 a month and a security deposit of \$850 was paid. It is undisputed that the tenant has not paid rent for September, October or November 2017. She filed her application on September 18, 2017 which was 7 days beyond the time limit set out in section 46 to dispute the Notice to End Tenancy. She said she was late in filing because she had a vehicle problem and she was filing a counter claim.

The tenant applied to cancel the Notice to End Tenancy and claimed \$5000 in reimbursement from the landlord for extensive renovations that she did to the basement of her unit. She said the basement was unfinished when she viewed it. She told the property manager's assistant that she needed it for an office and got verbal approval to do the work. She said she was told she would be reimbursed later. She submitted many invoices and photographs to show the extensive work she had done. When questioned about the size of the home and why she needed the basement, she said she used one bedroom for visiting grandchildren and the other for her books. The assistant property manager testified in the hearing that she had no authority to authorize reimbursement for repairs so she did not promise that at any time. She said that tenants may be allowed to make cosmetic changes to suit themselves but the landlord never promises to reimburse for such changes. She provided a letter from the Director dated August 29, 2017 which pointed out to the tenant that the home was a short term rental and it is not in the landlord's best interest to undertake expensive long term repairs. In the tenant's evidence is an email from the assistant property manager dated August 31, 2017, stating, "I won't look at any reimbursement yet- you will recollect that you started work on the house without advance notice to us or discussion about reimbursement until after the fact".

In evidence is the Notice to End Tenancy for unpaid rent, letters and statements from the landlord, invoices and photographs from the tenant and proofs of service from the landlord.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

Preliminary Issue: Late filing of Application

Section 66 of the Act sets out criteria for extending the time limit established by the Act in exceptional circumstances. Section 66(3) provides an arbitrator must not extend the time limit to make an application for dispute resolution to dispute a Notice to End Tenancy beyond the effective date of the Notice. I find the effective date on the Notice to End Tenancy was September 16, 2017 and the tenant filed her Application on September 18, 2017 so I find I have no jurisdiction to consider the request. In any case, I find that a vehicle problem or preparing her counter claim would not fit within the definition of exceptional circumstances as clarified by Policy Guideline 36.

Policy Guideline 36 clarifies exceptional circumstances as follows:

Exceptional Circumstances

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- *the party who applied late for arbitration was not feeling well*
- *the party did not know the applicable law or procedure*
- *the party was not paying attention to the correct procedure*
- *the party changed his or her mind about filing an application for arbitration*
- *the party relied on incorrect information from a friend or relative*

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- *the party was in the hospital at all material times*

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

Order of Possession:

I find the landlord entitled to an Order of Possession. On September 6, 2017, the tenant was served a Notice to End Tenancy for unpaid rent of \$1700. The landlord said and the tenant agreed that rent had not been paid within the 5 days provided in section 46 of the Act. Her application was not filed within the requisite 5 days either. Section 46 (5) of the Act provides that in these circumstances, the tenant is presumed to have accepted the end of the tenancy on the date set out in the Notice. I find the tenancy is ended as of September 16, 2017. I find the landlord entitled to an Order of Possession effective December 1, 2017 as agreed.

Monetary Order:

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord provided credible evidence that rent was not paid for September, October or November (\$1700 x 3 = \$5100). They claim \$100 filing fee **but do not wish to claim \$75 in NSF fees as the bank did not charge them..**

On the tenant's application, the onus is on her to prove on the balance of probabilities her claim. I find section 26 of the Act requires a tenant to pay rent on time whether or not the landlord is fulfilling their obligations under the Act. I find the tenant did not pay her rent but is claiming reimbursement of \$5000 for expenditures she made to finish the basement of the unit for her office. I find section 33 of the Act sets out requirements for reimbursement for even emergency repairs that the tenant makes. I find the tenant's repairs were not emergency repairs as defined in section 33 and furthermore, she obtained no approval from the landlord before doing them. I find in such a case, the Act does not require a landlord to reimburse a tenant. I dismiss her claim for damages.

Conclusion:

I find the landlord entitled to an Order of Possession effective December 1, 2017 as they agreed and to a monetary order, including recovery of the filing fee, as set out below. The landlord did not claim retention of the security deposit to offset the amount owing so the security deposit remains in trust for the tenant to be managed according to section 38 after the tenancy ends.

I dismiss the application of the tenant in its entirety without leave to reapply.

Calculation of Monetary Award:

Rent owed September, October, November	5100.00
3 NSF charges	75.00
Filing fee	100.00
Total Monetary Order to Landlord	5200.00

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 22, 2017

Residential Tenancy Branch