



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM & FFL

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

- a. An Order for Possession based on a mutual agreement to end the tenancy.
- b. 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 Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenant on December 19, 2017.

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on October 1, 2015. The present rent is \$2500 per month payable on the first day of each month. The tenant paid a security deposit of \$1250 at the start of the tenancy.

The landlord received some noise complaints from other residents and on September 25, 2017 he was served with a one month Notice to End Tenancy that set the end of tenancy for the end of October. The grounds set out in the Notice to End Tenancy stated that he was unreasonably disturbing another Tenant.

The Tenant filed an Application for Dispute Resolution to dispute the one month Notice to End Tenancy.

The landlord testified the parties had two meetings. On October the 27, 2017 the parties signed an agreement in writing that stated:

- The parties mutually agreed to end the tenancy agreement on February 28, 2017
- The Tenant must vacate the residential property by 1:00 p.m. on that date
- The tenant could terminate the agreement before that date by giving 30 days notice.

The tenant signed that agreement and returned it to the landlord.

The landlord produced a letter to the Tenant dated November 21, 2017 that stated the landlord was withdrawing the one Month Notice to End Tenancy subject to the agreement referred to above.

The landlord testified it was agreed the Tenant would cancel the hearing of his Application for Dispute Resolution that was set for December 15, 2017. The tenant did not cancel the Application and the hearing proceeded in the absence of the landlord. At the hearing the arbitrator ordered that the one month Notice to End Tenancy be cancelled. The decision letter does not make reference to the settlement agreement referred to above.

The Tenant testified as follows:

- There was no basis for the noise complaints referred to in the original one month Notice to End Tenancy.
- The landlord agreed to the mutual agreement to end the tenancy because the landlord was not able to re-rent the rental unit for November 1, 2017.
- The mutual agreement to end the tenancy is not valid for the following reasons:
 - He signed it under duress.
 - The landlord failed to provide consideration for the agreement.
 - The landlord failed to do what the landlord had agreed to do. In particular the landlord failed to advise the Residential Tenancy Branch that the Notice was invalid. He stated he did not want this Notice to be on his record.

Analysis - Order of Possession:

Section 45(1)(3) of the Residential Tenancy Act provides as follows:

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

...

(c) the landlord and tenant agree in writing to end the tenancy;

After carefully considering all of the evidence I determined the landlord is entitled to an Order of Possession based on a mutual agreement to end the tenancy for the following reasons:

- I do not accept the submission of the Tenant that the agreement entered into at the end of October is not enforceable because he signed it under duress. The fact that he felt compelled to sign it because of his personal and business situation (which in his view made moving at this time untenable) is not legal duress.
- I determined the landlord provided consideration in that the tenancy was extended several months rather than the end of tenancy date set out in the Notice.
- There is no basis for setting aside the agreement on the basis that the landlord failed to live up to the terms of the agreement. The agreement does not provide that the landlord was to advise the Residential Tenancy Branch that the Notice was withdrawn. Further, the Branch does not have a record of Notices served on a Tenant. A Notice only becomes part of a Residential Tenancy Branch file when it is included as evidence that is submitted as part of an Application for Dispute Resolution filed by one or both of the parties.
- There are strong policy reasons why mutual agreements should be enforced. There is insufficient evidence to establish that this contract was void or unenforceable.

As a result I determined the landlord was entitled to an Order for Possession. Accordingly, I granted the landlord an Order for Possession effective February 28, 2018.

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.

Cost of Filing fee:

As the landlord has been successful with this Application I ordered that the Tenant pay to the Landlord the sum of \$100 for the cost of the filing fee such sum may be deducted from the security deposit.

This decision is final and binding on both 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: January 25, 2018

Residential Tenancy Branch