



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, OPR, MNR, MDSD & FF

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

- a. An order for more time to make this application
- b. An order to cancel the 10 day Notice to End Tenancy dated December 1, 2017
- c. An order to suspend or set conditions on the landlords' right to enter.
- d. An order that the landlord comply with the Act, regulations and/or tenancy agreement.

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 \$900 for unpaid rent
- c. An order to recover the cost of the filing fee

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

At the start of the hearing the landlord asked if the hearing was being recorded. I advised that it was not being recorded. As a courtesy to the landlord(s) I pasted the portion of the Rules of Procedure dealing with the recording of hearings.

Recording of hearings

6.11 Recording prohibited

Persons are prohibited from recording dispute resolution hearings, except as allowed by Rule 6.12. Prohibited recording includes any audio, photographic, video or digital recording.

6.12 Official transcript

A party requesting an official transcript by an accredited Court Reporter must make a written request stating the reasons for the request to the other party and to the Residential Tenancy Branch directly or through a Service BC Office not less than seven days before the hearing.

An arbitrator will determine whether to grant the request and will provide written reasons to all parties and issue any necessary orders.

If permission is granted, the party making the request must:

- a) prior to the hearing, provide the Residential Tenancy Branch with proof of the Court Reporter's accreditation;

- b) make all necessary arrangements for attendance by the accredited Court Reporter and their necessary equipment;
- c) pay the cost of the accredited Court Reporter's attendance at the dispute resolution hearing;
- d) pay the cost of the Court Reporter's services and the cost of transcripts; and
- e) provide all parties and the Residential Tenancy Branch with official copies of the transcript.

6.13 Restricted use of recordings

Transcripts may not be used for any purpose other than the proceeding, a review or any court proceeding.

I find that the 10 day Notice to End Tenancy was personally served on the Tenant on December 1, 2017. Further I find that the Direct Request Application was personally served on the Tenant on December 21, 2017. Further I find the Application for Dispute Resolution/Notice of Dispute Resolution Hearing was personally served on the tenant on December 27, 2017. I accept the testimony of the landlord that the Tenant failed to serve a copy of the Application for Dispute Resolution that she filed on the landlords. 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 for more time to make this application?
- b. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated December 1, 2017?
- c. Whether the tenant is entitled to an order that the landlord comply with the Act, regulation and/or the tenancy agreement?
- d. Whether the tenant is entitled to an order suspending or setting conditions on the landlords' right to enter?
- e. Whether the landlord is entitled to an Order for Possession?
- f. Whether the landlord is entitled to A Monetary Order and if so how much?
- g. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The landlord testified the parties entered into a written tenancy agreement that provided that the tenancy would start on February 1, 2016. The rent is \$900 per month payable on the last day of the previous month. The tenant paid a security deposit of \$450 at the start of the tenancy.

The landlord testified the Tenant failed to pay the rent for December 2017 (\$900 is owed) and January 2018 (\$900 is owed) for a total of \$1800.

On January 16, 2018 the landlords obtained an Order of Possession by a Direct Request. The landlords testified the tenant remained in the rental unit for January and vacated in early February.

Tenant's Application:

The Tenant failed to attend the hearing. As a result I ordered that all of the claims made in the Tenant's application be dismissed without leave to re-apply.

In particular, the Application for Dispute Resolution filed by the Tenant sought more time to make the application. The tenant failed to provide any evidence of exceptional circumstances and there is no basis for extending the time. Further, the tenant failed to serve her Application for Dispute Resolution on the landlord as required by the Act and on that basis as well the Tenant's application should be dismissed. .

Further, I determined that the tenant failed to establish sufficient basis for an order to cancel the 10 day Notice to End Tenancy. As a result I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice.

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. The landlord used the approved government form. I determined rent is owed for December. As a result I granted the landlord an Order for Possession. I set the effective date as forthwith as the Tenant has already vacated the rental unit.

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.

Landlord's Application - Order of Possession:

For the reasons set out above I granted an Order of Possession.

Analysis - Monetary Order and Cost of Filing fee:

The landlord(s) made an oral application at the hearing to include a claim for "use and occupation rent" for January 2018 as the tenant remained in the rental unit during that period. .

"4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served."

I determined it was appropriate to grant the request of the landlords to amend their Application for Dispute Resolution to include a claim for rent for "use and occupation rent" for January 2018.

I determined the tenant has failed to pay the rent for the month(s) of December 2017 (\$900 is owed) and January 2018 (\$900 is owed) and the sum of \$1800 remains outstanding.

I granted the landlord a monetary order in the sum of \$1800 plus the sum of \$100 in respect of the filing fee for a total of \$1900

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.

Conclusion:

I dismissed the Tenant's application without leave to re-apply. I granted an Order of Possession forthwith. I ordered the Tenant to pay to the landlord the sum of \$1900.

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: February 08, 2018

Residential Tenancy Branch