



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes: CNC, MNDC, OLC, MNSD, FF

Introduction:

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

- a. An order to cancel the one month Notice to End Tenancy dated December 11, 2017
- b. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.
- c. An order suspending or setting conditions on the landlords' right to enter the rental unit or site.
- d. An order to recover the cost of the filing fee.

On February 8, 2018 the tenants filed an Amendment to their Application for Dispute Resolution that included a monetary claim of \$20,100.

The landlord filed an Application for Dispute Resolution seeking an early end to the tenancy.

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 one month Notice to End Tenancy was personally served on the Tenant(s) on December 11, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenants was served on the landlord by mailing, by registered mail to where the landlord resides on December 21, 2017. The landlord received the Amendment filed by the Tenant on February 13, 2018. The landlord failed to serve the Application for Dispute Resolution that he filed.

Preliminary Matters:

The landlord failed to serve the landlord's Application for Dispute Resolution on the tenant(s). As a result I ordered that the Application be dismissed with liberty to re-apply.

The tenants failed to file and serve the Amendment within the time frame required by the Rules of Procedure. I determined the landlord has been denied the rules of natural justice and would be significantly prejudiced if I proceeded with the hearing of that claim at this time. Rule 2.3 of the Rules of Procedure provides as follows:

"2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply."

I determined the monetary claim is not related to the claim to cancel the one month Notice to End Tenancy. I ordered that the Tenant(s) monetary claim set out in the Amendment be severed. The tenants retain the right to file a new Application for Dispute Resolution seeking a monetary order. The landlord alleged the Tenants damaged his property. The landlord also has the right to file an Application for Dispute Resolution seeking a monetary order. Those claims would be set down by the Residential Tenancy Branch Registry and heard in due course.

The tenants requested an adjournment on the basis there was new and relevant evidence that just came into their possession. I dismissed the adjournment request. The new and relevant evidence related to whether the tenants had tendered the payment of rent for February 2018 and whether a 10 day Notice to End Tenancy for non payment of rent served by the landlord is void. However, that issue is not before me. The landlord has not filed an Application for Dispute Resolution seeking an Order of Possession and monetary for non-payment of the rent for February. The tenants have not applied to cancel the 10 day Notice to End Tenancy. The major issue before me involves the validity of a one month Notice to End Tenancy dated December 11, 2017.

One of the issues before me is whether the tenants have been repeatedly late paying the rent. The Policy Guidelines provide that 3 late payments are sufficient to amount to repeated late payments unless there are extraordinary circumstances. The landlord produced a lengthy affidavit setting out his bank records relating to the late payments.

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling the one may Notice to End Tenancy dated December 11, 2017?

- b. Whether the tenants are entitled to an order that the landlord comply with the Act, regulations and/or tenancy agreement?
- c. Whether the tenants are entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit of site?
- d. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence:

The rental property is a farm with a number of buildings on the property. The tenancy began on February 1, 2012. The tenancy agreement provided that the tenant(s) would pay rent of \$2000 per month payable in advance on the first day of each month. The sum has been reduced to \$1500 per month. The landlord also permitted the tenant to pay at the start and middle of the month but stated he now wants the tenants to pay the rent at the start of the month.

Rather than litigate these issues the parties engaged in a lengthy negotiation in an attempt to resolve outstanding issues. Eventually the parties reached a settlement of some of the issues which is recorded below. As a result of the settlement it was not necessary for me to consider whether the landlord had grounds to end the tenancy on the basis of repeated late rent payment or for any other cause.

Settlement:

The parties reached a partial settlement of many of their outstanding issues and they asked that I record the settlement pursuant to section 63(2) of the Residential Tenancy Act as follows:

- 1) The parties mutually agree to end the tenancy on June 30, 2018.
- 2) The parties request the arbitrator issue an Order of Possession for June 30, 2018.
- 3) The parties acknowledge the tenants are responsible to pay the rent when due in accordance with the written tenancy agreement for February 2018 and the remaining months of the tenancy. The parties agree that the rent payment can be made by direct deposit to the landlords account.
- 4) Each party is at liberty to file an Application for Dispute Resolution seeking a monetary order should they wish and those claims would be dealt with some time in the future as set down by the Residential Tenancy Branch Registry..
- 5) The parties agree the landlord shall have access to the rental property on the following terms and conditions:

- a) The landlord shall have access to the rancher upon giving 24 hour notice by e-mail to the tenant and his solicitor. The parties agree it is not necessary for the landlord to identify the specific work he is doing.
 - b) Both parties shall respect each other and interact with each other in a civil manner.
 - c) The landlord shall park his vehicle at the front of the property near the white truck or alternatively on the adjoining property upon getting the consent of the owner of the adjoining property. The landlord shall have the right to drive his vehicle on the property to unload materials provided he gives the tenants 24 notice of this and he removes his vehicle after the materials have been unloaded.
 - d) The landlord shall not inspect the main house and other buildings until the end of the tenancy.
 - e) The landlord shall have the right to store building materials and tools (and not for any other purpose) in the garage commencing March 15, 2017 to the end of the tenancy upon giving 24 hours notice. This is given on a without prejudice basis for the tenants' to make a claim for a reduction of rent.
 - f) The landlord shall have the right to show the property and dwellings to prospective tenants commencing May 7, 2018 to the end of the tenancy until the rental property is re-rented upon giving 4 days notice in writing.
- 6) The landlord agrees to give the Tenant(s) access to the rental property during the period August 1, 2018 to August 15, 2018 for the purpose of harvesting their garlic crop. The tenants are responsible for protecting the garlic crop. The landlord and the new tenant are not responsible to protect the garlic crop.
- 7) The tenant(s) shall remove all of their belongings at the end of the tenancy and agree the landlord is not responsible to store any belongings left. The tenants release and discharge the landlord from making any claims for return of belongings left or claiming compensation for those belongings.

Determination and Orders:

As a result of the settlement I granted an Order of Possession effective June 30, 2018. All other claims in the application are dismissed.

The tenant(s) must be served with this Order of Possession as soon as possible. Should the tenants fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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 21, 2018

Residential Tenancy Branch