



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MDSD & FF

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

- a. An order to cancel the 10 day Notice to End Tenancy dated December 27, 2017.
- b. A monetary order in the sum of \$2300
- c. An order that the landlord make repairs and emergency repairs.
- d. An order that the tenant recover the cost of the filing fee

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 \$4629 for unpaid rent
- c. An order to retain the security deposit
- d. 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(s) reside on December 28, 2017. I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other by mailing, by registered mail to where the other resides.

Preliminary Matter:

The tenants failed to correctly spell the name of the landlord in the Application for Dispute Resolution which they filed.. With the consent of both parties I ordered that the Application for Dispute Resolution filed by the Tenant be amended to correctly identify the landlord.

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling the 10 day Notice to End Tenancy dated December 27, 2017?
- b. Whether the tenants are entitled to a monetary order and if so how much?
- c. Whether the tenants are entitled to an order for repairs and emergency repairs?
- d. Whether the tenant is entitled to recover the cost of the filing fee?
- 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 retain all or a portion of the security deposit/pet deposit?
- h. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The name of the landlord identified in the two Application for Dispute Resolution is the agent for the owner of the rental property. The owner and the tenants entered into a written tenancy agreement that provided that the tenancy would start on September 15, 2009. The tenants paid a security deposit of \$675 on September 12, 2009. The present rent is \$1543 per month payable in advance on the first day of each month. . However the landlord gave the tenants a 25% reduction of rent because of construction disturbances. The present rent to be paid by the tenants is \$1157.25 per month payable in advance on the first day of each month.

The tenant testified that in the evening of November 11, 2017 she tripped on a rock that had slipped from a pile of construction debris and suffered serious injuries including a concussion, whiplash and shoulder injury. She has attempted to get compensation from the landlord but without success. It is unclear whether the landlord, the construction company or both is at fault. The landlord testified the matter has been referred to the insurance company for the construction company and it was her understanding they have talked to the Tenant(s).

The tenant(s) acknowledged they have withheld the rent for December 2017 (\$1157.25 is owed), January 2018 (\$1157.25 is owed), February 2018 (\$1157.25 is owed) and March (\$1157.25 is owed) and the sum of \$4629 is outstanding. She testified she was not able to pay the rent when due because of additional medical bills etc. .

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

Section 26(1) of the Residential Tenancy 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.

The tenant(s) acknowledged that they failed to pay the rent for the months of December 2017, January 2018, February 2018 and March 2018 and the sum of \$4629 is owed. The Residential Tenancy Act does not permit a tenant to withhold the rent unless they have first obtained an order from an arbitrator permitting them to do so. The Act no longer gives a party the right to apply for an extension of time to pay the rent. In any event the tenant testified they are unable to pay the arrears (subject to their personal injury claim). The landlord has used the approved government form.

I ordered the application of the tenants for an order to cancel the 10 day Notice to End Tenancy be 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. This is an unusual case. Normally, where there has been a non payment of rent for 4 months the Order of Possession would go on two days notice. In this case both tenants are senior citizens and they do not have alternative accommodations to go to. One of the tenants has suffered significant injuries. The ability of both tenants to find part time work has been limited because of the injury. The landlord was claiming rent for all of March. I determined it was appropriate to set the effective day of the Order of Possession for March 31, 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.

Tenant(s) Application for a Monetary Order:

There was a discussion as to whether the tenants wished to proceed with their monetary claim. The Application for Dispute Resolution filed by the Tenants sought a monetary order in the sum of \$2300. However, the oral testimony given by the tenant if accepted would warrant a higher award than what was claimed. The tenants have not sought legal assistance. There is a question as to whether the tenant is bringing the claim against the correct party. It may be that the construction company, the landlord or both may be at fault. The tenants had computer problems and failed to provide the documents they intended to rely on prior to 14 days before the hearing. It appears they uploaded those documents yesterday.

The landlord submits the tenant should be claiming against the construction company for her injuries and not the landlord.

The tenants were given an opportunity to decide whether they wished to proceed with the hearing of their monetary claim or withdraw their claim on a without prejudice basis. The tenants stated they wished to withdraw their monetary claim at this time.

In the circumstances I determined it was appropriate to make an order dismissing the tenants' monetary claim as withdrawn. The claim is withdrawn on a without prejudice basis. The tenants retain the right to make a monetary claim against the landlord should they determine that is the correct party to claim against. I have not decided the tenants' claim on the merits. Liberty to re-apply is not an extension of any limitation period. .

As the tenancy is coming to an end I order the remainder of the tenants' application including the claim for repairs be dismissed.

Landlord's Application - Order of Possession:

For the reasons set out above I granted an Order of Possession effective March 31, 2018.

Analysis - Monetary Order and Cost of Filing fee:

I determined the tenant(s) have failed to pay the rent for the month(s) of December 2017 (\$1157.25 is owed), January 2018 (\$1157.25 is owed), February 2018 (\$1157.25 is owed) and March (\$1157.25 is owed) and the sum of \$4629 is outstanding.

I determined the landlord has given sufficient notice of their intention to claim for all of last month as provided in the Application for Dispute Resolution. I granted the landlord a monetary order in the sum of \$4629 plus the sum of \$100 in respect of the filing fee for a total of \$4729.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$675. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$4054.

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 Tenants' application to cancel the 10 day Notice to End Tenancy. I granted an Order of Possession effective March 31, 2018. I ordered that the landlord shall retain the security deposit of \$675. In addition I ordered that the Tenants pay to the landlord the sum of \$4054. I ordered that the remainder of the tenants' application including the claim for a monetary order be dismissed with liberty to re-apply.

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: March 1, 2018

Residential Tenancy Branch