



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, MT, FFL, MNRL-S, OPR

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

- a. An order to cancel the 10 day Notice to End Tenancy dated April 2, 2018
- b. A monetary order in the sum of \$1200
- c. An order for more time to make this application.

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 \$3600 for unpaid rent for April, May and June 2018.
- 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 posting on April 2, 2018. Further I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was filed by each party was sufficiently served on the other by mailing, by registered mail to where the other party resides. 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 cancelling the 10 day Notice to End Tenancy dated April 2, 2018
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. Whether the tenant is entitled to an order for more time to make this application?
- d. Whether the landlord is entitled to an Order for Possession?
- e. Whether the landlord is entitled to A Monetary Order and if so how much?
- f. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- g. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenant and the previous landlord entered into a written tenancy agreement that provided that the tenancy would start on September 1, 2014. The rent is \$1150 per month payable on the first day of each month. The tenancy agreement provided that the tenant paid a security deposit of \$575 and a pet damage deposit of \$575 at the start of the tenancy. The present landlord purchased the property and took possession of it in November 2017.

The tenant failed to pay the rent when due on April 1, 2018. The landlord served a 10 day Notice to End Tenancy on April 2, 2018. The tenant subsequently paid the arrears of rent for April on April 30, 2018. The landlord accepted the payment for “use and occupying.” The tenant failed to pay the rent for May 2018 and the sum of \$1150 remains outstanding. The tenant(s) continues to reside in the rental unit.

The tenant’s husband passed away in November of 2017 and she has been out of work until recently dealing with her loss. Further, she testified that the government misplaced certain documents required for her widow’s pension and there have been delays paying out of a \$2500 lump sum and the pension.

Tenant’s Application:

I determined the tenant failed to establish sufficient cause for an order to cancel the 10 day Notice to End Tenancy. The tenant owed rent for April when the Notice to End Tenancy was served on her. The landlord used the correct government form. The tenant failed to pay the arrears within the 5 days that would void the Notice to End Tenancy. The landlord did not reinstate the tenancy when the tenant paid the rent for April at the end of the month as the landlord stated he was accepting the payment for “use and occupying.”

While one sympathizes with the tenant’s difficult situation the Residential Tenancy Act no longer gives an arbitrator the authority to extend the time for the payment of rent in a

situation such as this. The landlord stated he wants the tenancy to come to an end and was not prepared to give the tenant an extension of time to pay the rent.

Determination and Orders:

As a result I determined that the landlord has established sufficient cause to end the tenancy. 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. I further order that the application of the tenant for a monetary order and the cost of the filing fee be dismissed as the tenant failed to provide sufficient proof to establish these claims.

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. In the circumstances I determined that it was appropriate to set the effective date of the Order of Possession for May 31, 2018 to allow for the orderly winding up of the tenancy.

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 effective May 31, 2018.

Analysis - Monetary Order and Cost of Filing fee:

I determined the tenant has failed to pay the rent for the month(s) of May 2018. The tenancy agreement provides that the rent is \$1150. There is insufficient evidence on file to establish that the rent has been increased in accordance with the Residential Tenancy Act. I granted the landlord a monetary order in the sum of \$1150 plus the sum of \$100 in respect of the filing fee for a total of \$1250. I dismissed the claim for rent for April as that has been paid. Further I dismissed the claim for rent for June 2018 as the tenancy will be coming to an end before the rent for June is owed.

Security Deposit:

I determined the security deposit is \$575 and the pet damage deposit is \$575 as provided in the tenancy agreement for a total of \$1150. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$100.

Conclusion:

I dismissed the tenant's application and granted an Order of Possession. I ordered that the landlord shall retain the security deposit and pet damage deposit totaling \$1150. I further ordered that the tenant pay to the landlord the sum of \$100.

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.

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: May 22, 2018

Residential Tenancy Branch