



Dispute Resolution Services

Page: 1

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 makes the following claims:

- a. An order to cancel the 10 day Notice to End Tenancy dated April 22, 2018.
- b. An order to cancel a one month Notice to End Tenancy which is undated but set the end of tenancy for April 30, 2018.
- c. A monetary order in the sum of \$21,000
- 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 \$4000 for unpaid rent and damages
- c. 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. The parties acknowledged they had received the documents of the other party.

I find that the one month Notice to End Tenancy was sufficiently served on the tenant as the tenant filed an Application for Dispute Resolution for an order to have it cancelled. I find that the 10 day Notice to End Tenancy was served on the Tenant by posting on April 22, 2018. Further I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing filed by each party was sufficiently served on the other by registered mail. I find that the Amendment filed by the tenant was sufficiently served on the landlord.

There is a great deal of animosity between the parties. I was the arbitrator in a hearing between these parties where there reached a settlement which included an agreement to end the tenancy on June 30, 2018. Unfortunately the ill will between the parties has continued which prevents them from coming up with an orderly settlement of the matter.

Preliminary Matter:

Both parties have presented a large number of documents as evidence. It was apparent that it was not going to be possible to hear both claims within the time period allotted. The landlord testified he has filed an Application for Dispute Resolution seeking a monetary order which is to be heard in June. The landlord has not yet served the Tenant.

With respect to each of the applicant's claims I find 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.

After hearing submissions from the parties I determined it was appropriate to hear the tenant's application for an order to cancel the one month Notice to End Tenancy and the 10 day Notice to End Tenancy along with the landlord's application for a monetary order for non-payment of rent for April 2018 and May 2018 as those claims are related. I ordered that the tenant's claim for a monetary order be severed and dismissed with liberty to re-apply.

The tenant objected stating that he felt this was unfair as his monetary claim had been previously severed in the earlier hearing. The parties are encouraged to talk to the Residential Tenancy Branch Registry to see if they a longer time period can be blocked off in order to consider the parties application for a monetary order.

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 22, 2018?
- b. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy which is undated but sets the end of tenancy for April 30, 2018.
- c. Whether the tenant is entitled to recover the cost of the filing fee?

- 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 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. There is a dispute as to whether the landlord holds a security deposit.

The landlord testified the tenants failed to pay the rent for April 2018 (\$1500 is owed) and May 2018 (\$1500 is owed) and the sum of \$3000 is owed for those two months. The tenant testified he has prepaid rent in the sum of \$2000 by paying a drywall contractor in 2016 with the consent of the landlord.

In a decision dated February 21, 2018 I recorded a settlement between the parties which included the following:

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."

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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.

Tenant's Application:

I determined the landlord failed to establish sufficient cause to end the tenancy on the basis of the one month Notice to End Tenancy as the landlord failed to identify the grounds to end the tenancy on the Notice. As a result I ordered that the one month Notice to End Tenancy be cancelled.

I determined the landlord has established sufficient grounds to end the tenancy on the basis of the 10 day Notice to End Tenancy for non-payment of rent for the following reasons:

- The settlement agreement between the parties provides that the tenants are responsible to pay the rent in accordance with the settlement agreement for February 2018 and the remaining months of the tenancy. The tenants failed to pay the rent for the months of April 2018 and May 2018 in accordance with the settlement which they agreed to.
- I determined the tenants failed to prove that the landlord has agreed to apply the payment to a drywall contractor in the sum of \$2000 to subsequent rent and this is a credit that has not been applied. The tenant relies on an invoice dated July 2016 and an e-mail dated September 1, 2016 where the tenant states that "this needs to be reflected in our rent." I was not able to find the e-mail in the materials uploaded by the tenant. However, the solicitor for the tenant read out the relevant portion which is set out above. The tenant failed to provide evidence that the landlord agreed to this. The landlord testified this was dealt with in 2016 and there is no credit of \$2000 to be applied to the rent. In summary I determined the tenants failed to prove that the landlord agreed that this sum could be applied future rent and this this credit has not been applied. It may be that the tenant has a monetary claim for this sum. That matter will be dealt with in a subsequent hearing if the parties are unable to reach an agreement. However, in accordance with section 26(1) of the Act the tenant cannot use this as a basis for not paying the rent when due.

Determination and Orders:

I determined that the landlord has established sufficient cause to end the tenancy for non payment of rent. As a result I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy dated April 22, 2018 . I order that the tenancy shall end. I further order that the application of the tenant for the cost of the filing fee be dismissed.

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 on 2 days notice.

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 on 2 days notice.

Analysis - Monetary Order and Cost of Filing fee:

I determined the tenants failed to pay the rent for the month(s) of April 2018 and May 2018 and the sum of \$3000 remains outstanding. I dismissed the landlord's claim for the additional \$1000 as the landlord failed to prove he was entitled to this additional sum.

I ordered that the Tenants pay to the Landlord the sum of \$3000 plus \$100 for the cost of the filing fee for a total of \$3100.

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.

The landlord has attended the property on a number of occasions and the police have been called. At the end of April he signed an undertaking not to attend the property unless permitted by the court or a residential tenancy officer. I refused the landlord's request to make an order that the landlord be permitted to go onto the property on 24 hours notice. Given the animosity and ill will between the parties such an order would not be appropriate.

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 25, 2018

Residential Tenancy Branch