



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, FF

Introduction:

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

- a. An order to cancel the two month Notice to End Tenancy dated March 25, 2018
- b. 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.

Neither party could provide accurate evidence of service. I find that the 2 month Notice to End Tenancy was served on the Tenant on March 25, 2018 as he acknowledged service of the document in his Application for Dispute Resolution. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord as the landlord acknowledged service of the Application.

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated March 25, 2018?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on October 1, 2016. The tenancy agreement is oral. The parties agreed that the tenant would pay rent of \$1000 per month payable in advance on the first day of each month. The tenant did not pay a security deposit.

The landlord seeks to regain possession of the rental property based on the following evidence:

- He has been working out of town for the last few years. However, he has recently been offered full time employment with a towboat company which is to start on June 1, 2018.

He testified he needs to move back into the rental unit in order for him to work at this new job in his home community.

- The landlord provided a statement from the employer who intends to offer him full time employment commencing June 1, 2018. The statement provides that the landlord was working part time for him since January 2018 and that it would be a real bonus to have the landlord live in the property he owns which is only 2 km to his place of employment. The employer could use the landlord in cases of emergencies.
- The landlord testified that he would be homeless if he is unable to regain possession of his house and he would have to put his belongings into storage.

The tenant disputes the good faith intention of the landlord to move into the rental unit. The tenant gave the following evidence:

- That he intends to file a Writ in the Supreme Court on the basis that the landlord has breached a contract with him to sell the property to him.
- The landlord has lost two previous applications.
- The landlord has a buyer for the house and wishes to evict him to sell it to the buyer.
- The eviction would put undue stress to relocate his business (selling organic produce) which is coming into the peak season.
- He has several trucks and trailers operating from the property.
- He has made significant repairs to the house.
- He has a licence to start a marijuana grow operation on the property.
- The landlord has not lived in the property for the last 5 years.
- The landlord is not paying his property share of taxes and has committed insurance fraud. He provided that the tenant(s) would pay rent of \$1000 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$500 on June 1, 2013.
- The tenant's witness testified he is from out of town and has just started working for the tenant and he would not have a place to live if the landlord obtained possession of the rental property.

The landlord denies the allegations of the tenant. He denies that he has a buyer for the house and that he is selling it. He testified he has never agreed to sell the property to the tenant or that there was a rent to own agreement. He testified the rental property was rented to the landlord as a rental and not to operate a business. He denies the property is a farm.

Grounds for Termination:

The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides as follows:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

Analysis:

After carefully considering all of the evidence I determined the landlord has established sufficient cause to end the tenancy for the following reasons:

- I accept the evidence of the landlord that he will be offered full time employment with a tow boat company commencing June 1, 2018 and that he intends to move into the rental unit. I accept the letter from the tow boat company confirming the intention to offer him full time employment and the advantage to the employer of having the landlord live a short distance away if an emergency comes up.
- The tenant made a number of allegations in a letter he uploaded to the file 7 days ago. However, the tenant failed to provide any evidence to support these allegations. The tenant failed to prove the landlord has a buyer and that the landlord intends to sell the property.
- The tenant stated he was prepared to buy the property from the landlord. The issue of whether the parties are able to reach a binding contract is not before me.
- The tenant failed to prove the landlord and tenant entered into a contract for the sale of the property to the tenant. The landlord denies any agreement and the tenant failed to present evidence to support this allegation.
- The tenant stated he intends to file a Writ in the Supreme Court of Canada. I assume that he means the Supreme Court of British Columbia. Policy Guideline #27 includes the following:

“Section 58(3) of the RTA and 51(3) of the MHPTA provide that a court does not have and must not exercise any jurisdiction in respect of a matter that must be submitted to the director for dispute resolution, except if:

- the claim is for an amount that is more than the monetary limit for claims under the Small Claims Act
- **the dispute is linked substantially to a matter that is before the Supreme Court**

Small Claims Limit Section 58(2) of the RTA and 51(2) of the MHPTA provide that the director can decline to resolve disputes for monetary claims that exceed the small claims limit. The limit is \$35,000.

There is no evidence that the tenant has filed a claim in the Supreme Court of British Columbia. As a result it cannot be said that the dispute is linked substantially to a matter that is before the Supreme Court.

- The alleged improprieties on the part of the landlord for insurance claims and failing to pay taxes. No evidence was provided by the tenant to support this allegation. In any event the tenant failed to prove it is relevant.
- The letter uploaded by the tenant states he wants a stay on the proceedings. There is no basis for an adjournment.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the Notice to End Tenancy. 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 7 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.

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 30, 2018

Residential Tenancy Branch