



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, DRI, OLC, FFT

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 April 20, 2018 and setting the end of tenancy for June 30, 2018
- b. An order disputing a rent increase
- c. An order that the landlord comply with the Residential Tenancy Act, Regulations and/or tenancy agreement.
- 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. The parties chose to engage in settlement discussion rather than proceed with the litigation.

I find that the Notice to End Tenancy was personally served on the Tenant on April 20, 2018. 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 May 7, 2018. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling the two month Notice to End Tenancy dated April 20, 2018?
- b. Whether the tenants are entitled to an order disputing a rent increase?
- c. Whether the tenants are entitled to an order that the landlord comply with the Residential Tenancy Act, Regulations and/or tenancy agreement?
- d. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began in June 2010. The present rent is \$1250. The Tenants paid a security deposit of \$550 at the start of the tenancy.

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

- The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant

The tenants dispute the Notice on the basis the landlord failed to obtain the proper permits and approvals required by law.

Settlement:

During the hearing the parties reached a settlement and they asked that I record the settlement pursuant to section 63(2) of the Residential Tenancy Act as follows:

- a. The parties mutually agree to end the tenancy on December 31, 2018.
- b. The parties request that the arbitrator issue an Order of Possession for December 31, 2018.
- c. The parties acknowledge that as the Tenants were served a 2 month Notice to End Tenancy the tenant are entitled to the equivalent of one month rent free under section 51 of the Act which is set out below.
- d. The parties acknowledge that as the Tenants were served a 2 month Notice to End Tenancy they are entitled to end the tenancy early under section 50 of the Residential Tenancy Act upon giving 10 notice. That section is set out below.
- e. The landlord shall pay to the Tenants the sum of \$100 for the cost of the filing fee such sum may be deducted from future rent.

Order for Possession:

As a result of the settlement I granted an Order of Possession effective December 31, 2018.

The tenants 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.

I ordered that the landlord shall pay to the Tenants the sum of \$100 for the cost of the filing fee such sum may be deducted from future rent.

I dismissed the Tenant's application disputing a rent increase with liberty to re-apply as neither party has presented sufficient evidence in order to determine this issue on its merits.

As a courtesy to the parties I have included section 50 and 51 of the Residential Tenancy Act:

Tenant may end tenancy early following notice under certain sections

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property] or 49.1 [landlord's notice: tenant ceases to qualify], the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [tenant's compensation: section 49 notice].

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

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: June 26, 2018

Residential Tenancy Branch