



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, PSF, RR

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant requesting a cancellation of a 10-Day Notice to End Tenancy, a monetary order for damage or compensation, an order requiring the Landlord to provide services or facilities required, and a rent reduction.

This matter was originally scheduled for July 12, 2018; however, it was adjourned as new information concerning an order of the Supreme Court of British Columbia was disclosed. The adjournment to July 18th was necessary to provide time to submit and review that Order and consider what issues were to proceed.

The Landlord and Tenant both appeared for the scheduled hearing; the Landlord was represented by his legal counsel who made submissions on his behalf. I find that the Notice of Hearing was properly served and that evidence was submitted by all parties. The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

It was noted during the hearing that the Tenant’s claim for repairs to appliances and a rent reduction was only relevant if the tenancy were to continue; in addition, the issue of \$5,000.00 in compensation for renovation work done by the Tenant at the rental unit was a secondary issue and not of an urgent nature. Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must

be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 Day Notice to End Tenancy for Unpaid Rent and the continuation of this tenancy is not sufficiently related to the Tenant's monetary claim for compensation and a rent reduction. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The Tenant's other claims are unrelated in that the basis for it rests largely on other facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notice. I exercise my discretion to sever and dismiss the Tenant's monetary claims.

It was suggested that the Tenant may wish to seek legal advice, as the Residential Tenancy Branch only has jurisdiction over residential tenancies and not over employment agreements for construction work inside a rental unit. I make no finding of fact with respect to the Tenant's claims for monetary compensation and he is granted leave to reapply on these secondary matters, if he deems it necessary.

Issues to be Decided

Is the Tenant entitled to a cancellation of the 10-Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the Residential Tenancy Act ("Act")?

If not, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Background and Evidence

The tenancy began March 1, 2018 for a fixed term with a monthly rent of \$3,000.00, payable on the first of each month; a copy of the tenancy agreement was submitted into evidence. The Tenant disputes the copy submitted, stating that the original version includes terms for renovation work. He indicated that his former partner has that copy. He stated that he rented a two-bathroom unit, but that the basement bathroom needed to be completed. For this reason, he states that the original tenancy agreement included that renovation to be completed.

The Landlord served a 10-Day Notice to End Tenancy for Unpaid Rent on May 10, 2018 with an effective vacancy date of May 20, 2018 by posting it on the Tenant's door, which is deemed received three days later. The time period for disputing the notice expired and he then applied via a "direct request" for an *ex parte* Order of Possession and a monetary order for the money owing. That application was filed on May 22, 2018. On May 28, 2018, an Order for Possession and a monetary order for \$3,100.00 for unpaid rent was issued by an Adjudicator who had reviewed the materials.

In the meantime, the Tenant had filed this Application on May 22, 2018 as well, requesting a cancellation of the notice and other relief. He states that he filed his Application at a service centre as opposed to online, and argues that the systems resulted in a delay that impacted the decision that was rendered before his dispute could be heard.

In June, the Tenant returned home to find a bailiff removing his belongings. He contacted the Residential Tenancy Branch who emailed a copy of the May 28th decision and Orders to him; he then filed with the Supreme Court of BC to stay the Order of Possession, and the following Order (submitted into evidence) was issued by that court on June 26, 2018:

"This Court Orders that Order of Possession is stayed until after resolution hearing is finished."

The Tenant argues that although he withheld two months of rent, the original tenancy agreement included \$7,000.00 of renovation work he completed for the Landlord, but was not paid for. He further argues that he went to the Residential Tenancy Branch the day he received the Notice and filed an Application within the required time periods, and that there was an administrative error which resulted in the Order of Possession being issued prematurely.

The Landlord argues that the Order of Possession has not been cancelled or even reviewed by the Supreme Court as the Tenant has not filed a Petition requesting that. He argues that the Order is still in effect and that the issue is *res judicata* and cannot be re-opened at this hearing. He states that there is no authority or power to review and question the previous decision in this hearing. He suggests that the Tenant had the opportunity to request additional time to file his Application, but this was not included in his Application before us today.

Analysis

The issue of the 10-Day Notice to End Tenancy was considered and adjudicated as of May 28, 2018. That decision resulted in an Order of Possession which is considered final and binding on the parties. I note that in his decision, the Adjudicator stated:

“I accept the evidence before me that the tenant has failed to pay the rent owed in full within the five days granted under section 46(4) of the Act and did not dispute the 10 Day Notice within that five day period. Based on the foregoing, I find that the tenant is conclusively presumed under sections 46(5) and 53(2) of the Act to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, May 23, 2018”

The Tenant had until May 18, 2018 to file his dispute application – 5 days after the deemed service date of May 13, 2018. In light of this, it is irrelevant that the Tenant filed his Application on May 22, 2018 in person (as opposed to using the online filing system) as it was received *after* the expiration of the period of time allotted to file a dispute application. The adjudicator applied the conclusive presumption rule and found that the Tenant had accepted the Notice to End the Tenancy.

Accordingly, I am not in a position to re-open the evidence or reconsider those issues, as this issue is considered to be *res judicata*. *Res judicata* is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black’s Law Dictionary, 7th Edition, are: an earlier decision has been made on the issue; a final judgment on the merits has been made; and the involvement of the same parties.

This Tenant’s Application to cancel the Notice to End Tenancy is dismissed.

There is no evidence before me that the Tenant filed an Application for Review Consideration, although he may do so following the instructions as outlined at the end of this decision for the previous decision awarding the Order of Possession to address his concerns about the timing of his filing of the dispute; there is a statutory deadline of two days within which the Tenant may apply, and as the original Order was stayed until this hearing was held, the Tenant may still apply within two days of *this* decision for a review consideration or speak to an Information Officer for more information.

In addition, the Tenant may make an application with the Supreme Court for Judicial Review of the previous decision if warranted. The Tenant would be required to set out

the grounds upon which the Residential Tenancy Branch decision of May 28, 2018 would be set aside or the matter re-heard. I leave those issues with the Tenant to consider, and I make no findings of fact with respect to the arguments he has raised, as the decision to award the Order of Possession is res judicata and not within my authority to address at this time.

Conclusion

The Tenant's Application to cancel the Notice to End Tenancy is hereby dismissed.

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: July 25, 2018

Residential Tenancy Branch