



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR-DR

CNC, MT, CNR, AAT, LRE, LAT, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) and two Amendments to an Application for Dispute Resolution (the “Amendment”) that were filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”);
- More time to file an Application seeking cancellation of a 10 Day Notice;
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”);
- An order for the Landlord to comply with the *Act*, regulation or tenancy agreement;
- Authorization to change the locks;
- An order restricting or setting conditions on the Landlord’s right to enter the rental unit; and
- An order allowing the Tenant and his guests access to the rental unit.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

This hearing dealt with a Cross-Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking:

- An Order of Possession based on a 10 Day Notice; and
- Outstanding rent.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant’s support person, a witness for the Tenant, and the agent for the Landlord (the “Agent”), all of who provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the hearing.

Preliminary Matters

Preliminary Matter #1

Although the Agent testified that the Landlord acknowledged receiving the Tenant's Application and Amendments, the Tenant testified that he never received anything from the Landlord and did not know until the start of this hearing that the Landlord had filed a Cross-Application.

The Agent testified that to his knowledge, the Landlord's Application was served; however, he acknowledged that the Landlord is currently in the hospital and having difficulty remembering or providing details about the service of this Application.

The parties both provided contradictory affirmed testimony with regards to whether or not the Tenant was served with a copy of the Landlord's Application. Although a copy of a Proof of Service form was submitted by the Landlord, only the first page is present. As a result, I find that the incomplete Proof of Service fails to establish that the Landlord's Application was in fact served on the Tenant.

Rule 3.5 of the Rules of Procedure states that at the hearing, the Applicant must be prepared to demonstrate to the satisfaction of the arbitrator, that each respondent was served with the Notice of Dispute Resolution Proceeding Package as required by the *Act* and the Rules of Procedure.

Based on the contradictory testimony of the parties and the absence of evidence to corroborate the Agent's testimony that the Landlord's Application was in fact served on the Tenant, I find that the Landlord has failed to satisfy me, on a balance of probabilities, that the Notice of Dispute Resolution Proceeding Package, including the Landlord's Application, was served on the Tenant as required by the *Act* and the Rules of Procedure.

The ability to know the case against you and to submit evidence in your defense is fundamental to the dispute resolution process. As a result, I find that it would be a breach of both the Rules of Procedure and the principles of natural justice to accept the Landlord's Application for consideration in this hearing as it has not been served on the Tenant as required by the *Act* and the Rules of Procedure. As a result, I dismiss the Landlord's Application with leave to reapply. The hearing therefore proceeded based only on the Tenant's Application and Amendments.

Preliminary Matter #2

Although the Tenant applied for more time to file an Application seeking cancellation of the 10 Day Notice, in the hearing both parties agreed that the 10 Day Notice was served on the Tenant on September 10, 2018, and the first Amendment shows that the Tenant filed his Application seeking to dispute the 10 Day Notice on September 10, 2018. As a result, I find the Tenant does not require more time in which to file the Application as it was filed in accordance with section 46(4) of the *Act*.

Preliminary Matter #3

In their Application and Amendment the Tenant sought multiple remedies under multiple sections of the *Act*, a number of which were unrelated to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a One Month Notice and a 10 Day Notice, I find that the priority claims relate to whether the tenancy will continue or end. I find that the other claims made by the Tenant are not sufficiently related to the notices to end tenancy or continuation of the tenancy and as a result, I exercise my discretion to dismiss the following claims by the Tenant with leave to reapply:

- An order for the Landlord to comply with the *Act*, regulation or tenancy agreement;
- Authorization to change the locks;
- An order restricting or setting conditions on the Landlord's right to enter the rental unit; and
- An order allowing the Tenant and his guests access to the rental unit.

As a result, the hearing proceeded based only on the Tenant's Application seeking cancellation of a One Month Notice and cancellation of a 10 Day Notice.

Settlement

The opportunity for settlement was discussed with the parties during the hearing. The parties were advised on several occasions during the hearing that there is no obligation to resolve the

dispute through settlement, but that pursuant to section 63 of the *Act*, I could assist the parties to reach an agreement, which would be documented in my Decision and supporting Orders.

During the hearing, the parties mutually agreed to settle this matter as follows:

1. The parties agree that the matter of rent for September and October of 2018 and the matter of outstanding are not covered by this settlement agreement.
2. The parties agree that the tenancy may continue until November 7, 2018, at 1:00 P.M., only if the following conditions are met:
 - a. On or before 11:59 P.M. on November 1, 2018, the Tenant pays \$116.67 in rent for November 1, 2018 – November 7, 2018;
 - b. The Tenant cleans the rental unit and the residential property of garbage, either by placing it in the provided garbage bins or disposing of it appropriately off site, no later than 6:00 P.M. on October 25, 2018; and
 - c. The Tenant and his guests abide by reasonable standards of conduct and noise during the day and are reasonably quiet after 11:00 P.M. until a reasonable time in the morning.
3. If the Tenant abides by the above noted terms, the Landlord agrees that the Tenancy may continue until November 7, 2018, at 1:00 P.M. at which time the Tenant agrees to vacate the rental unit.
4. The Tenant understands that failure to abide by any of the terms set out under section 2 of this mutual settlement agreement will constitute a breach of a material term of the tenancy agreement and result in the termination of the tenancy two days after service of the attached Order of Possession.
5. The Tenant agrees that if the tenancy is continued pursuant to section 2 of this mutual settlement agreement, and they reside in the rental unit on or after November 1, 2018, they will owe the Landlord \$116.67 in rent for November 1, 2018 – November 7, 2018.
6. The Tenant agrees to comply with section 37 of the *Act* at the end of the tenancy.
7. The rights and responsibilities of the parties under the *Act*, regulation, and tenancy agreement continue until the tenancy is ended in accordance with this agreement.
8. The Tenant agrees to withdraw their Application in full as part of this mutually settled agreement.

Conclusion

In support of the settlement described above, and with the agreement of the parties, I grant the Landlord two orders of possession as follows:

- An Order of Possession effective at 1:00 P.M. on November 7, 2018; and
- A Conditional Order of Possession effective two days after service on the Tenant.

The Landlord is provided with the Order of Possession effective November 7, 2018, in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is also provided with the Conditional Order of Possession effective two days after service on the Tenant. This Order **must** be read in conjunction with the related mutual settlement agreement and the Landlord **must not** serve or seek to enforce this Order on the Tenant **unless** the Tenant fails to meet the conditions set out under section 2 of the mutual settlement agreement. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court. If the Tenant complies with section 2 of this agreement, the two day Order of Possession is deemed to be of no force or effect.

In support of the settlement described above, and with the agreement of the parties, I grant the Landlord a Conditional Monetary Order in the amount of **\$116.67**. This Order **must** be read in conjunction with the related mutual settlement agreement and the Landlord **must not** serve or seek to enforce this Order on the Tenant, unless the tenancy is continued pursuant to sections 2 and 5 of the mutual settlement agreement **AND** the Tenant fails to pay the rent as required under section 2.

The Landlord is provided with this Monetary Order in the above terms and should the Tenant fail to pay November 2018 rent as required pursuant to sections 2 and 5 of the mutual settlement agreement, the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: October 22, 2018

Residential Tenancy Branch