



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: AAT, CNL, LRE, OLC, RP

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 August 14, 2018 and setting the end of tenancy for November 1, 2018
- b. An order that the landlord allow access to the rental unit for the Tenant and his guests.
- c. An order restricting or setting conditions on the landlord's right to enter the rental unit.
- d. A repair order
- e. An order for the reduction of rent.
- f. An order that the landlord comply with the Residential Tenancy Act, Regulations and/or tenancy agreement.
- g. An order that the tenant is entitled to an order for reimbursement of 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.

I find that the 2 month Notice to End Tenancy was personally served on the Tenant on August 14, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord carries on business as the landlord acknowledged receipt of the documents. 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 tenant is entitled to an order to cancel the two month Notice to End Tenancy dated August 14, 2018 and setting the end of tenancy for November 1, 2018?
- b. Whether the tenant is entitled to an order that the landlord allow access to the rental unit for the Tenant and his guests?

- c. Whether the tenant is entitled to an order restricting or setting conditions on the landlord's right to enter the rental unit?
- d. Whether the tenant is entitled to a repair order?
- e. Whether the tenant is entitled to an order for the reduction of rent?
- f. Whether the tenant is entitled to an order that the landlord comply with the Residential Tenancy Act, Regulations and/or tenancy agreement?
- g. Whether the tenant is entitled to an order for reimbursement of the cost of the filing fee?

Background and Evidence:

The tenant moved into the rental property in July 2013. The landlord purchased the property in April 2017. The tenant paid a security deposit of \$262.50 in July 2013. The present rent is \$565 per month payable in advance on the first day of each month.

The landlord testified the rental property is over 50 years old and is in need of significant repairs and renovations.

The tenant testified he does not want to live in the rental unit long term but needs sufficient time to find an alternative rental unit.

The 2 month Notice to End Tenancy relies on the following grounds:

- 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 landlord failed to use the correct form. The legislation has been changed effective May 17, 2018 and the landlord should have used a 4 month Notice to End Tenancy. As a result I determined the Tenant was entitled to an Order cancelling the 2 month Notice to End Tenancy. The landlord has the right to serve a new 4 month Notice to End Tenancy.

A summary of the changes to the legislation are set out in the bulletin set out on the Residential Tenancy Branch website which provides:

“Effective May 17 2018:

- Landlords must give four months' notice to end tenancy for demolition, renovation or repair, or conversion, and tenants have 30 days to dispute the notice,
- Compensation is being increased to 12 months' rent if a landlord (or purchaser) ends a tenancy under section 49 (landlord use) and they don't (within a reasonable period) take steps to accomplish the purpose for ending the tenancy or use the rental unit for that stated purpose for at least 6 months.

- Tenants have a right of first refusal to enter into a new tenancy agreement at a rent determined by the landlord if the landlord ends their tenancy to renovate or repair the rental unit.
- A landlord must compensate a tenant 12 months' rent payable under the tenancy agreement if the tenant exercises a right of first refusal and the landlord does not give the tenant notice and a tenancy agreement to sign.
- If a landlord is ending a tenancy on behalf of a purchaser, the notice must contain the purchaser's name and address."

The landlord stated he intended to serve a 4 month Notice to End Tenancy prior to the end of September which would set the end of tenancy for January 31, 2019. Rather than go through this process and a possible application from the tenant disputing the Notice the parties reached a settlement on the ending of the tenancy. .

Settlement:

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

- a. The parties mutually agree to end the tenancy on February 28, 2019.
- b. The parties request that the arbitrator issue an Order of Possession for February 28, 2019.
- c. The parties acknowledged that the landlord used a 2 month Notice to End Tenancy at a time when a 4 month Notice to End Tenancy should have been used. The parties agree that the tenant has all of the rights he would have been entitled to had a 4 month Notice to End Tenancy been used.
- d. The parties agree that as the Tenant was served with a Notice to End Tenancy for landlord use the Tenant is entitled to end the tenancy early under section 50 of the Act and the equivalent of one month rent free and the right to end the tenancy early under section 51 of the Act.

As a result of the settlement I issued an Order of Possession effective February 28, 2019.

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.

As a courtesy to the parties I set out the provisions of section 50 and 51 of the 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.

As a result of the settlement I issued an Order of Possession effective February 28, 2019.

Analysis:

The parties were unable to reach a settlement on a number of claims raised in the Application for Dispute Resolution. With respect to each of the other claims raised by the Tenant I find as follows:

I ordered that the landlord make the following repairs within 2 weeks of the date of this order:

- a. Repair the oven
- b. Repair the leak to the fridge
- c. Fix the toilet handle.

There is a dispute between the parties as to whether the landlord has given the Tenant adequate notice when accessing the rental unit. Attached is section 29 of the Act:

“Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).”

I order that the landlord comply with section 29 of the Act. I determined no further order was appropriate.

I dismissed the claim for a reduction of rent as the Tenant failed to prove that his enjoyment of the rental unit was reduced which would give rise to a reduction of rent..

The Tenant claimed the upstairs tenant was harassing him. In particular the Tenant testified the upstairs tenant dropped paint and a Swiss army knife on him on separate occasions. Upon receiving the complaint the landlord investigated and the upstairs tenant acknowledged he/she inadvertently dropped the Swiss army knife while doing a chore but denied dropping paint. I determined the Tenant failed to prove that the landlord is responsible for this action or has failed to adequately respond. As a result I dismissed this claim.

I dismissed the Tenant’s claim for reimbursement of the cost of the filing fee as the Tenant failed to prove he paid a filing fee.

At the hearing the Tenant requested that the landlord add his agent as a tenant to the tenancy agreement. The landlord objected stating the rental unit is too small for a second person. Rule 2.2 of the Rules of Procedure provide as follows:

“2.2 Identifying issues on the Application for Dispute Resolution

The claim is limited to what is stated in the application.”

I determined that I do not have jurisdiction to consider this as it was not included in the Application for Dispute Resolution.

Conclusion:

In summary I granted an Order of Possession effective February 28, 2019. I ordered that the landlord make the following repairs within 2 weeks of the date of this order:

- a. Repair the oven
- b. Repair the leak to the fridge
- c. Fix the toilet handle.

I ordered that the landlord comply with section 29 of the Act. I dismissed the claim for a reduction of rent or that the landlord resolve the dispute with the upstairs tenants. I dismissed the claim for reimbursement of the cost of the filing fee. I determined I do not have jurisdiction to consider the request to add the tenant’s agent as a tenant as it was not included in the Application for Dispute Resolution.

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: September 24, 2018

Residential Tenancy Branch