



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, OPC & FFL

The Application for Dispute Resolution filed by the Tenant(s) makes the following claims:

- a. An order for more time to make this application
- b. An order to cancel the 10 day Notice to End Tenancy dated August 2, 2018

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for repeated late payment of rent.
- 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. The parties acknowledged they had received the documents of the other party.

I find that the 10 day Notice to End Tenancy was served on the Tenant by mailing, by registered mail to where the tenant resides on August 2, 2018. The Tenant testified the upstairs tenant was withholding the mail and that she did not receive the Notification from Canada Post until the middle of August. The landlord provided a search of the Canada Post tracking service which indicates the Tenants signed for it on August 17, 2018.

Further I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing filed by the landlord was sufficiently served by mailing, by registered mail to where the Tenant resides. I find that the Tenant filed her Application for Dispute Resolution on September 28, 2018 and attempted to serve it on the landlord by mailing,

by registered mail to where the landlords reside shortly after that. She testified the documents were returned.

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the Tenant(s) are entitled to an order for more time to make this application?
- b. Whether the tenant(s) are entitled to an order cancelling the 10 day Notice to End Tenancy dated August 2, 2018?
- c. Whether the landlord is entitled to an Order for Possession?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on March 1, 2017. The rent is \$800 per month payable on the first day of each month. The tenant paid a security deposit of \$400 at the start of the tenancy.

The landlord testified the tenant made the following late payments prior to the service of the one month Notice to End Tenancy:

- The rent for April was not paid in full until April 5, 2018.
- The rent for May was not paid in full until May 18, 2018.
- The rent for June was not paid in full until June 28, 2018.
- The rent for July was not paid in full until July 25, 2018.

In addition the landlord testified the tenant has failed to pay any rent for the months of September 2018, October 2018 and November 2018.

The tenant testified she was not able to file a claim on a timely basis because the upstairs tenant changed the mailbox and withheld her mail. She further testified the landlord agreed she could pay the rent late.

The landlord testified there is no proof that he gave the tenant permission to pay the rent late. .

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- Tenant is repeatedly late paying rent

Tenant's Application for More Time to Make This Application for More Time:

Section 47(4) and (5) of the Act provide that a Tenant must make an application to dispute a one month notice within 10 days after the date the tenant receives the Notice. If the tenant does not make that application the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date:

I determined the Tenant received the one month Notice to End Tenancy on August 17, 2018. The Tenant filed her Application for Dispute Resolution on September 28, 2018. That date is approximately 5 weeks after the required date to file an Application to dispute the Notice to End Tenancy. .

An arbitrator can extend the time to file an Application for Dispute Resolution to dispute a Notice to End Tenancy only in exceptional circumstances.

I do not accept the submission of the Tenant that the reason she failed to file within the 10 days was because the upstairs Tenant was withholding the mail amounts to exceptional circumstances. The Tenant acknowledged she had received the Notice to End Tenancy around the middle of August 2018. A search of the Canada Post tracking service indicates she signed for it on August 17, 2018. Even if the tenant's evidence was accepted this is not an adequate explanation for the delay as she became aware of the requirement to file at that time. The tenant failed to provide sufficient evidence that would amount to exceptional circumstances.

As a result I dismissed the Tenant's application for more time to file the application. On that basis alone I determined that there is no basis for an order to cancel the one month Notice to End Tenancy and the Tenant's application is dismissed.

Further, I determined the Tenant's application to cancel the one month Notice to End Tenancy should be dismissed on the merits. The Policy Guidelines provides that three late payment is the minimum number sufficient to justify a notice under this provisions. I determined the landlord has established late payments for the month April 2018, May 2018, June 2018 and July 2018. The tenant failed to present sufficient proof to establish that the landlord agreed to these late payments.

The tenant has not paid any rent for September 2018, October 2018 and November 2018. She testified she withheld the rent because of problems with the rental unit. The law does not permit a tenant to withhold the rent as the tenant has done. Section 26(1) of the Act provides as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

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 for an order for more time to make this application and an order to cancel the one month Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice.

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 of Possession on 2 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.

Landlord's Application - Order of Possession:

For the reasons set out above I granted an Order of Possession on 2 days notice.

Analysis - Monetary Order and Cost of Filing fee:

As the landlord has been successful with this application I ordered that the Tenant pay to the Landlord the sum of \$100 for the cost of the filing fee.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion:

I ordered that the application of the Tenant to extend the time to make the application and for an order to cancel the one month Notice to End Tenancy be dismissed without leave to re-apply. I granted an Order of Possession on 2 days notice. I further ordered the tenant to pay to the landlord the cost of the filing fee in the sum of \$100.

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: November 09, 2018

Residential Tenancy Branch