



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC CNR LRE MNDCT PSF FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause dated January 2, 2019 (“One Month Notice”) under section 47 and cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 10, 2019 (“Ten-Day Notice”), together referred to as “the Notices to End Tenancy”;
- An order to restrict or suspend the landlord’s right of entry pursuant to section 70;
- A monetary order for compensation or damages pursuant to section 67;
- An order requiring the landlord to provide services or facilities as required by the tenancy agreement or the *Act* under section 62; and
- Recovery of the filing fees of this application from the landlord pursuant to section 72.

SD attended the hearing and stated he is the agent for the landlord. The tenant attended. Both had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

SD acknowledged receipt of the tenant’s Notice of Hearing and Application for Dispute Resolution.

Preliminary Issue #1

Section 2.3 of the *Residential Tenancy Branch Rules of Procedure* (the “*Rules*”) states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the following claims are not related to the tenant’s application to the cancel the Notices to End Tenancy. Therefore, the following claims are dismissed with leave to reapply.

- An order to restrict or suspend the landlord’s right of entry pursuant to section 70;
- A monetary order for compensation or damages pursuant to section 67;
- An order requiring the landlord to provide services or facilities as required by the tenancy agreement or the *Act* under section 62.

Preliminary Issue # 2

SD provided affirmed testimony that the owner and landlord of the property is the City of Langley. The City was not represented at the hearing. SD stated the City authorized SD in a written agreement to represent the City with respect to the tenancy and, by extension, to appear at this hearing. The tenant did not submit the authorization as evidence.

The Rules of Procedure state that an arbitrator may require an agent to provide proof of his or her appointment to represent a party.

Section 6.8 states as follows:

6.8 Proof of authority to act

The arbitrator may require an agent to provide proof of his or her appointment to represent a party and may adjourn a dispute resolution hearing for this purpose.

During the hearing, I requested that SD submit a fax or email to the RTB containing the authorization confirming his appointment as agent in order that the hearing may proceed. However, SD stated he was attending the teleconference while in his vehicle and was unable to do so.

I accordingly found that SD did not submit proof of his appointment by the landlord to appear at the hearing. I therefore found SD was not the authorized agent of the landlord for the purposes of the hearing. Because of this finding, I did not consider any evidence submitted by SD with respect to the application.

Preliminary Issue # 3

I explained to the parties that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution 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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notices to End Tenancy, I explained to the parties that the onus to prove the reasons for ending the tenancy transfers to the landlord as the landlord issued the Notices and seeks to end the tenancy.

Because of my findings above, I find the landlord submitted no evidence admissible under the *Act* and Rules of Procedure.

As no evidence was submitted on behalf of the landlord, I order that the tenant's application to cancel the Notices to End Tenancy is granted. I order that the tenancy shall continue until ended in accordance with the agreement and the *Act*.

As the tenant has been successful in her application, I find the tenant is entitled to reimbursement of \$100.00 for the filing fee. I direct the tenant may deduct this amount on a one-time basis only from rent due to the landlord pursuant to section 72.

Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the Two Month Notice and the Ten-Day Notice pursuant to sections 47 and 49 of the *Act*?
2. If the tenant's application is dismissed, is the landlord entitled to an order of possession, pursuant to section 55 of the *Act*?
3. Is the tenant entitled to reimbursement of the filing fee?

Conclusion

I order that the Notices to End Tenancy are cancelled. I order that the tenancy continues until it is ended in accordance with the agreement and the *Act*.

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: February 26, 2019

Residential Tenancy Branch