



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT, MT, OLC, FFL, MNRL-S, OPR

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

- a. An order to cancel the 10 day Notice to End Tenancy dated June 4, 2019
- b. An order for more time to make this application.
- c. An order that the landlord comply with the Act, regulation and/or the tenancy agreement
- d. An order that the tenant recover the cost of the filing fee

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

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$2800 for unpaid rent
- c. An order to retain the security deposit
- d. 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.

Preliminary Matter:

Both parties referred to evidence in the form of text messages, e-mails and other documents that were not uploaded and not provided to the Branch. The Rules of Procedure set out the requirements for the production of evidence that a party intends to rely on at the hearing. An applicant must provide the evidence at least 14 days and a respondent must provide the evidence at least 7 days before the hearing.

The tenant testified that he has PTSD and was not able to upload evidence because of episodes he was having. It has been 6 weeks since both parties filed their claim. If a party is incapacitated because of a health or other reason it is incumbent on her/her/ them to get legal assistance or the assistance of co-tenant or a friend.

It turned out it was not necessary for me to see those documents to make a decision. The tenant did not request an adjournment. However, I would have been very reluctant to grant an adjournment if such a request had been made.

I find that the 10 day Notice to End Tenancy was personally served on the Tenant on June 5, 2019. Further I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing filed by the Tenant was served on the Landlord by mailing, by registered mail to where the landlord resides on June 17, 2019. I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing filed by the Landlord was personally served on the Tenants on June 18, 2019. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling the 10 day Notice to End Tenancy dated June 4, 2019?
- b. Whether the tenants are entitled to an order for more time to make this application?
- c. Whether the tenants are entitled to an order that the landlord comply with the Act, regulation and/or the tenancy agreement?
- d. Whether the tenants are entitled to recover the cost of the filing fee?
- e. Whether the landlord is entitled to an Order for Possession?
- f. Whether the landlord is entitled to A Monetary Order and if so how much?
- g. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- h. 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 May 5, 2019 and end on May 5, 2020. The written tenancy agreement does not state when the rent is due and payable. The rent is \$2800 per month payable in advance. The tenants paid a security deposit of \$1400 prior to the start of the tenancy.

The tenancy agreement also contained the following clause:

“this agreement will terminate If the land lord decided to sell the house or build a new house.

This agreement will terminate if the landlord dont recieve the rent after 10th of each month”

Briefly, the relevant evidence is as follows:

- The tenants viewed the rental unit in April while another tenant was living and they were not able to see the entire unit including the master bedroom and ensuite bathroom.
- They agreed to rent the rental unit and sent the landlord the deposit.
- The tenants were out of town and were not able to move in on the first of the month or sign a tenancy agreement at the start of the tenancy.
- The tenants returned to the lower mainland on May 6, 2019. They contacted the landlord to get the keys to move in and to sign the tenancy agreement. At that time the landlord advised that he did not have a driver's license and could not meet them at the rental unit. The tenants agreed to meet the landlord at his office downtown.
- The parties meet in the evening on May 6, 2019. The tenants took the tenancy agreement and the full rent for May in the sum of \$2800 was paid in cash on that date.
- The tenants returned to the rental unit and saw that the back door was wide open. The rental unit was not properly cleaned. The landlord did not give them a front door key. The landlord gave them a blank Condition Inspection Report but did not attend to conduct an inspection.
- The tenants contacted the landlord and made a number of objections. There was an exchange of communications trying to resolve the problems.
- Eventually an inspection was held on May 29, 2019 and it was determined the toilet was leaking in the ensuite bathroom. The tenant objected to the condition of the rental unit.
- It appears the tenant's signed the tenancy agreement on May 29, 2019.
- The relationship between the parties deteriorated. The tenant alleges the landlord and his friends have assaulted him. The landlord alleges the Tenants is extremely abusive.

- The tenant left a cheque for a part payment of the rent for June in a mailbox. The landlord refused to accept the part payment and refused to take the cheque.
- The parties testified they exchanged e-mails and text messages. Neither party produced this evidence.
- The landlord subsequently agreed with the tenant to reduce the rent for June by \$651 to compensate the tenant for their late arrival in May.
- The balance of the rent for June was paid by the tenant in the last week of June. The landlord accepted the payment without qualification.
- On July 5, 2019 the landlord gave the Tenant an Invoice stating that he was seeking the full rent for June if the tenant was not successful with this application and that he was accepting the payment for "use and occupation."
- The rent for July has not been paid. The tenant takes the position he is entitled to a discount. The landlord disagrees.

Tenant's Application to cancel the 10 day Notice to End Tenancy. :

I ordered that the tenant be granted to the date of filing the Tenant's Application for Dispute Resolution which is outside of the required 5 day period as I determined the Tenant's health situation amounts to an exceptional circumstance.

After carefully considering all of the evidence I determined the Tenant is entitled to an order to cancel the 10 day Notice to End Tenancy dated June 4, 2019 for the following reasons:

- I determined the rent is due and payable on the 5th day of each month. The 10 day Notice to End Tenancy was served on the Tenant at a time when the rent was not due and owing. The rent is due and payable on the 5th of each month. The tenant has the full day to pay the rent. The earliest the landlord could serve a Notice to End Tenancy for the failure to pay the rent for June would have been June 6, 2019. On the face of the Notice it states it was served in person on June 5, 2019.
- The rent for June has been paid. The landlord agreed to a reduction of the rent for June. The tenant paid the balance of the rent after deducting the agreed sum. The landlord accepted the payment without conditions. In doing so I determined the landlord reinstated the tenancy.
- I determined the Invoice that was given to the Tenant on July 5, 2019 after the payment cannot preserve the rights of the landlord to take the position that the tenancy must end at the end of the rental payment period. Should the landlord wished to preserve this right he must do so at the time of payment.

- The rent for July has not been paid. However, the landlord has not served a 10 day Notice to End Tenancy for non payment of the rent for July.

There is a dispute between the parties. The tenant takes the position that he is entitled to a reduction of the rent because of the poor condition of the rental unit. The landlord disagrees but has not served a Notice to End Tenancy on the Tenant for non-payment of the rent for July. The parties are encouraged to obtain legal assistance. As a courtesy I refer the parties to section 26(1) of the Residential Tenancy Act which 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.

The tenant must file an Application for Dispute Resolution seeking a reduction of rent because of the condition of the rental unit to have that issue adjudicated. The tenant cannot withhold the rent until after an arbitrator determines the tenant is entitled to the deduction and orders accordingly.

Determination and Orders:

As a result I ordered that the Notice to End Tenancy dated June 4, 2019 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. I dismissed the tenant's claim to recover the cost of the filing as I determined the Tenant's action in withholding the rent without authorization has contributed to the dispute between the parties.

Landlord's Application - Order of Possession:

I dismissed the landlord's application for an Order of Possession as the 10 day Notice to End Tenancy relied on by the landlord has been cancelled.

Landlord's Application - Monetary Order, Security Deposit and Cost of Filing fee:

I dismissed the landlord's claim of \$2800 for non payment of the rent for June. The landlord agreed to accept a reduction of rent. The reduced rent has been paid and the tenancy was reinstated.

The landlord has not make a claim for the rent for July. I determined in a situation such as this that it was not appropriate to amend the landlord's application to make this claim as it does not give the tenant sufficient time to properly defend himself. The landlord has liberty to file another application making this claim.

I dismissed the landlord's claim to retain the security deposit and the cost of the filing fee.

Conclusion:

I ordered that the 10 day Notice to End Tenancy be cancelled. The remaining claims made by the tenant are dismissed. I dismissed the landlord's claims.

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: August 01, 2019

Residential Tenancy Branch