



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, FFT, OPC, FFL

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated October 2, 2019
- b. An order to recover the cost of the filing fee.

The Application for Dispute Resolution filed by the Landlord seeks the following:

- a. An Order of Possession pursuant to a one month Notice to End Tenancy dated October 2, 2019
- b. An order to recover the cost of the filing fee.

The landlord's application was set for hearing on December 12, 2019. The issues are identical with the application brought by the Tenant. With the consent of both parties I ordered that the hearing of the landlord's application be heard at the same time as the tenant's application set for November 8, 2019.

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 Notice to End Tenancy was personally served on the Tenant on October 2, 2019. 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 on October 17, 2019. 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 cancelling the one month Notice to End Tenancy dated October 2, 2019?
- b. Whether the tenant is entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to an Order of Possession?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

This month-to-month tenancy began on February 1, 2009, with monthly rent currently set at \$700.00 per month, payable on the first of each month. The landlord currently holds a security deposit of \$300 for this tenancy. The tenants continue to reside in the rental unit.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The landlord testified as follows:

- There are an unreasonable number of occupants living in the rental unit. The rental unit was rented to AD approximately 10 years ago. He is the only person identified on the lease. The tenant's daughter is living there. Further, the landlord testified the daughter common law spouse is living there as well.
- The matter came to their attention when they noticed a vehicle that did not belong to the tenants in the underground parking. They put a Notice on the vehicle that it could be towed. The vehicle was subsequently removed from the underground parking but it is still parked on the street on a regular basis.
- The owner of the vehicle subsequently talked to the landlord and he told her he was the common law spouse of the tenant's daughter (ED).
- The landlord served a one month Notice to End Tenancy on the Tenant on July 5, 2019 that alleged there was an unreasonable number of occupants in the rental unit and that the tenant breached a material term of the tenancy agreement.
- Landlord Witness #1 testified he had a conversation with the common law spouse of the daughter on July 10, 2019 and he advised the witness that he was moving. Witness #1 advised the landlord and the landlord overheard this conversation. Witness #1 did not testified at the hearing that was held on

September 6, 2019. However, the landlord advised the arbitrator of the evidence that was given by Witness #1. Witness #1 no longer resides in the rental property as he moved away at the end of August.

The tenants gave the following evidence:

- She has lived with her father in the rental property for the last 10 years.
- Her boyfriend does not live in the property and has never resided there.

Analysis:

This matter was previously decided by another arbitrator in a decision dated September 9, 2019 after a hearing was that was held on September 6, 2019. The issue was the validity of a one month Notice to End Tenancy dated July 5, 2019 that set out identical grounds which are the subject of this hearing. The arbitrator held as follows:

“Based on the evidentiary materials as well as the testimony in the hearing, I am not satisfied that the tenants have failed to correct any material breaches after being informed by the landlord. As stated earlier in my decision, I am not satisfied that the landlord had provided sufficient evidence to support that any unauthorized occupants were residing in the rental unit, and I accept the tenants’ testimony that after being informed about the parking situation, ED’s boyfriend no longer parks his vehicle there.

For the reasons cited above, I find that the landlord has not met their burden of proof in establishing that they have cause to end this tenancy under section 47 of the *Act*, and accordingly I am allowing the tenants’ application for cancellation of the 1 Month Notice dated July 5, 2019. The tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

As the tenants were successful in their application, I allow the tenants to recover the filing fee for this application.

I dismiss the landlord’s entire application without leave to reapply.”

The principle of res judicata applies to residential tenancy hearings. It provides that a matter which has already been conclusively decided by a court is conclusive between the parties. Final judgments prevent any re-examination or re-trial of the same dispute between the same parties. The Supreme Court of British Columbia in *Jonke v, Kessler, Vernon Registry*, Docket No. 3416 dated January 16, 1991 held that the principle of res judicata applies to residential tenancy arbitration. The policy reasons in favor of the

principle are set out in a decision of Hardinge L.J.S.C., in *Bank of B.C. v. Singh* 17 B.C.L.R. (2d) 256 as follows:

“...While people must not be denied their day in court, litigation must come to an end. Thus litigants must bring their whole case to court and they are not entitled to relitigate the same issues over and over again. Nor are litigants entitled to argue issues that should have been before the court in a previous action...”

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy for the following reasons:

- The principle of res judicata applies to this matter. The issues were adjudicated in the hearing on September 6, 2019. The decision of September 9, 2019 binds the parties and the landlord is not permitted to bring forward matters that have already been decided. The October 2, 2019 notice sets out the identical grounds to the July 5, 2019 notice. The landlord is attempting to rely on the same facts. In this hearing the landlord relies on Witness #1 who did not testified in the September 6, 2019 hearing. However his evidence was presented to the arbitrator and it is not new evidence.
- Further, as of the date of the Notice to End Tenancy (October 2, 2019) there is insufficient evidence to establish that the daughter's boyfriend is residing in the rental unit. The fact that he is a guest from time to time does not make him an occupant.

As a result I ordered that the Notice to End Tenancy dated October 2, 2019 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. As the tenants have been successful I ordered that the landlord pay to the Tenants the sum of \$100 for the cost of the filing fee.

I allow the tenants to recover the monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord 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.

The landlord's entire application is dismissed without leave to reapply.

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 08, 2019

Residential Tenancy Branch