



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFL, MNDCL-s, MNRL-S, OPC, OPR

The Application for Dispute Resolution filed by the SS and CS seeks an order to cancel a one month Notice to End Tenancy dated September 3, 2019 and setting the end of tenancy for October 31, 2019.

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

- a. An Order for Possession for non-payment of rent and for cause.
- b. A monetary order in the sum of \$9250 for unpaid rent and damages
- 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.

I find that the 10 day Notice to End Tenancy was served on the Tenants by posting on September 3, 2018. I find that the one month Notice to End Tenancy was served on the Tenants by posting on September 2, 2019. Further 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 September 13, 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 one month Notice to End Tenancy dated September 3, 2019 and setting the end of tenancy for October 31, 2019.
- b. Whether the landlord is entitled to an Order for Possession?
- c. Whether the landlord is entitled to A Monetary Order and if so how much?
- d. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- e. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The landlord and ChS entered into a fixed term tenancy that provided that the tenancy was to start on May 12, 2019 and end on October 31, 2019. The agreement further provided that the tenants would have to vacate at that time. The tenancy agreement between the landlord and ChS states that she has sublet the rental unit to SS and CS. The rent is \$2750 per month payable on the first day of each month. The tenancy agreement provided that a security deposit of \$1375 and a pet damage deposit of \$400 was to be paid. The evidence at the hearing indicates that it was paid. .

ChS vacated the rental unit at the end of August 2019. SS and CS continued to live in the rental unit.

The rent for the months of September 2019, October 2019 and November 2019 has not been paid and the sum of \$8250 remains outstanding.

The SS testified as follows:

- ChS vacated at the end of August without giving notice to him and CS. He was out of town at the time.
- He requested the landlord that he and his roommate be permitted to take over the lease. He gave her reference information including his previous landlord and his boss.
- He attempted to pay the rent on September 28, 2019 but the landlord refused and told him she was not accepting payment of rent. It is unclear whether he attempted to pay his share of the rent or the entire rent.
- He testified wants to remain in the rental unit indefinitely. He will be having knee surgery shortly and is not able to move.
- He stated he has his share of the outstanding rent to pay the landlord. He was not able to confirm that his roommate his share.

- SS and CS have not filed an application to dispute the 10 day Notice to End Tenancy. ChS also has not disputed the 10 day Notice to End Tenancy. She did not provide a forwarding address and no one appears to know where she is presently residing.

Tenant's Application:

SS and CS seek an order to cancel the one month Notice to End Tenancy that was served by posting on September 3, 2019. The grounds set out in the Notice state that the Tenant has assigned or sublet the rental unit without the landlord's written consent.

I determined the landlord does not have grounds to end this tenancy on that basis. The tenancy agreement between the landlord and the ChS states that ChS is subletting the tenancy agreement to these tenants. As a result I ordered that the one month Notice to End Tenancy be cancelled. There may be other grounds the landlord could have ended the tenancy pursuant to a one month Notice to End Tenancy but I determined the grounds set out in the Notice to End Tenancy were not valid.

Landlord's Application - Order of Possession:

I determined the landlord was entitled to an Order for Possession. SS and CS are over holding tenants. The landlord served a 10 day Notice to End Tenancy on September 3, 2019 for nonpayment of rent. SS and CS failed to pay the arrears with the 5 days that would void the Notice. Further, they failed to attempt to pay the rent within that 5 day period.

SS, CS, and ChS have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides 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 (my emphasis)**. Accordingly, I granted the landlord an Order for Possession effective November 30, 2019.

The tenants 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.

Analysis - Monetary Order and Cost of Filing fee:

I determined the SS and CS became over-holding tenants who failed to pay the rent for the month(s) of September 2019 (\$2750 is owed), October 2019 (\$2750 is owed) and November 2019 (\$2750 is owed) and the sum of \$8250 remains outstanding. I

determined the landlord has given sufficient notice of their intention to claim for all of last month as provided in the Application for Dispute Resolution. I granted the landlord a monetary order in the sum of \$8250 plus the sum of \$100 in respect of the filing fee for a total of \$8350.

Security Deposit:

I declined to make an order with respect to the security deposit as it was paid by ChS but she has not been served with a copy of the Application for Dispute Resolution in these proceedings.

Conclusion:

I ordered that the one month Notice to End Tenancy be cancelled. I granted an Order of Possession pursuant to the 10 day Notice to End Tenancy effective November 30, 2019. I granted the landlord a monetary order in the sum of \$8350.

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.

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 15, 2019

Residential Tenancy Branch