



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, OPC, MNR, MDSD & FF

Introduction

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

- a. An order to cancel the 10 day Notice to End Tenancy dated June 7, 2016
- b. An order to cancel a one month Notice to End Tenancy dated June 6, 2016.
- c. A monetary order in the sum of \$3500 for non payment of rent

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 \$3600 for unpaid rent

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 one month Notice to End Tenancy was personally served on the Tenants on June 6, 2016. I find that the 10 day Notice to End Tenancy was personally served on the Tenants on June 7, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenants was served on the landlord by mailing, by registered mail to where the Landlord resides on June 13, 2016. I find that the Application for Dispute Resolution filed by the Landlord was served on the Tenants by mailing by registered mail to where the Tenants reside on June 14, 2016. 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 7, 2016?

- b. Whether the tenants are entitled to an order cancelling a one month Notice to End Tenancy dated June 6, 2016.
- c. Whether the tenants are entitled to a monetary order and if so how much?
- d. Whether the landlord is entitled to an Order for Possession?
- e. Whether the landlord is entitled to A Monetary Order and if so how much?
- f. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- g. 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 January 11, 2015. The rent is \$1400 per month payable on the first day of each month. The tenant paid a security deposit of \$700 at the start of the tenancy. The tenant(s) failed to pay the rent for the months of June and July and the sum of \$2800 remains outstanding.

The tenants do not dispute the non payment of rent. However, they testified as follows:

- They put a stop payment on the rent cheque for June because the landlord threatened them he would have them out by the end of June.
- The landlord is trying to force them out because he wants to sell the rental unit and refuses to pay them compensation.
- When the rental unit was entered into in January 2015 the landlord represented to them he had no intention of selling the rental unit
- The landlord misrepresented to them they could have a camper where the strata bylaws prohibited it.

Tenant's Application:

Section 26(1) of the Residential Tenancy 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.

I determined there was no legal basis for the tenants to withhold the rent for June and July. The landlord had a right to serve a 2 month Notice to End Tenancy on the tenants. The tenants applied to have validity of that Notice to End Tenancy determined in an arbitration hearing. However, this does not give the tenants the right to withhold the rent. The landlord used the approved form and rent was owed when the 10 day

Notice to End Tenancy was served. As a result I ordered that the application to cancel the Notice be dismissed. The tenancy shall end on the date set out in the Notice to End Tenancy.

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 for Possession.

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.

As a result of my determination with respect to the 10 day Notice to End Tenancy it is no longer necessary to consider the validity of the one month Notice to End Tenancy.

The Application for Dispute Resolution filed by the Tenants seeks a monetary order in the sum of \$3500. The tenants subsequently filed a Monetary Order Worksheet claiming \$7340. However, the tenants failed to amend the Application for Dispute Resolution. I can only consider the Tenants' application for a monetary order as set out in the Application for Dispute Resolution. With respect to each of the Tenants' claims I find as follows:

- a. I dismissed the tenants' application for 2 months rent without leave to re-apply. The tenancy ended because of the tenant's failure to pay the rent. The landlord did not serve a 2 month Notice to End Tenancy on the Tenants. It is possible that a prospective purchaser would have been content to have the tenants continue as tenants.
- b. I dismissed the tenants' application for the return of their security deposit. The tenant is not entitled to make a claim against the security deposit until the earliest of 15 days after the end of tenancy or the date the tenants give the landlord their forwarding address in writing. At any rate the landlord has a monetary order that can be applied against the security deposit.
- c. I dismissed the tenants' claim for moving expenses without leave to re-apply as the tenancy has come to an end because of their failure to pay the rent.
- d. The Application for Dispute Resolution mentions a claim for "invested items in home." I determined the tenants failed to give the landlord sufficient notice of precisely what they are claiming and for how much. As a result I severed this claim from the monetary application. Further, the tenants failed to provide sufficient proof this this claim. The tenants retain the right to file a new

Application for Dispute Resolution that would properly identify what claims they are making.

Landlord's Application - Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenants' application to set aside the Notice to End Tenancy has been dismissed. Accordingly, I granted the landlord an Order for Possession. I set the effective date of the Order for Possession for July 31, 2016.

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.

Analysis - Monetary Order and Cost of Filing fee:

I determined the tenant has failed to pay the rent for the month(s) of June and July and the sum of \$2800 remains outstanding. I granted the landlord a monetary order in the sum of \$2800 plus the sum of \$100 in respect of the filing fee for a total of \$2900.

Security Deposit:

The tenants applied for an order for the return of the security deposit. While the Application for Dispute Resolution filed by the landlord does not claim the deposit, the landlord claims the deposit in his monetary order worksheet. I determined it was appropriate to consider this claim. I determined the security deposit plus interest totals the sum of \$700. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$2200

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:

In summary I dismissed the Tenants' application to cancel the 10 day Notice to End Tenancy and granted an Order for Possession effective July 31, 2016. I determined it was not necessary to consider the Application to cancel the one month Notice to End Tenancy as the tenancy is coming to an end. I dismissed the tenants' application for 2 months rent, the return of the security deposit and moving expenses without leave to re-apply. I dismissed the tenants claim for "invested items" with leave to re-apply. I

granted the landlord a monetary order in the sum of \$2900 for non-payment of rent for June and July and the cost of the filing fee. I ordered the landlord shall retain the security deposit of \$700 leaving a balance of \$2200.

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: July 18, 2016

Residential Tenancy Branch