



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      CNR, OPR, MNR, MDSD & FF

### Introduction

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

- a. An order to cancel the one month Notice to End Tenancy dated September 28, 2016 and setting the end of tenancy for October 31, 2016.
- b. A monetary order in the sum of \$794.
- c. An order to suspend or set conditions on the landlord's right to enter.
- d. An order that the landlord comply with the Act, regulation and/or the tenancy agreement.

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

- a. An Order for Possession for cause.
- b. A monetary order in the sum of \$700
- 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 one month Notice to End Tenancy was served on the Tenant on by mailing, by registered mail to where the Landlord carries on business on September 28, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other.

### Preliminary Matters:

I dismissed the monetary claims filed by each party with liberty to re-apply for the following reasons:

- Rule 2.3 provides as follows:

### **2.3 Related issues**

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 determined the monetary claims of each party is not sufficiently related to the application to cancel the Notice to End Tenancy and an Application for a monetary order and on that basis they should be dismissed with leave to reapply.

- There was not sufficient time to hear the evidence relating to the monetary claims.
- Rule 2.5 provides that the parties must file a detailed calculation on a monetary claim. The Residential Tenancy Branch has assisted the parties by providing a monetary order worksheet. In both cases the parties failed to file a monetary order worksheet. I determined the parties failed to give the other party sufficient notice of the claims being made.

#### Issue(s) 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 September 28, 2016?
- b. Whether the tenant is entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to an Order for Possession?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

#### Background and Evidence

In March 2015 the parties entered into a fixed term tenancy agreement that provided that the tenancy would start on March 9, 2015, end on March 1, 2016. The rent was \$1395 per month payable in advance on the first day of each month.. The tenant paid a security deposit of \$697.50 at the start of the tenancy. It does not appear the tenant signed that agreement but she did sign a Residential Tenancy Addendum.

The relationship between the parties deteriorated after the landlord attempted to collect a rent increase that exceeded what was permitted under the Act. That rent increase was ruled unenforceable in a hearing on October 20, 2016.

The Notice to End Tenancy dated September 28, 2016 relies on the following grounds:

- Tenant or a person permitted on the property by the tenant has:
  - ...

- seriously jeopardized the health or safety or lawful right of another occupant or the landlord
  - put the landlord's property at significant risk
- Tenant has engaged in illegal activity that has, or is likely to:
  - damage the landlord's property
  - ...
  - jeopardize a lawful right or interest of another occupant or the landlord
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

On September 14, 2016 the landlord served a breach letter on the tenant that identified 12 issues and demanded that the tenant rectify the problems by September 29, 2016. .

The landlord seeks to end the tenancy based on the following evidence:

- The landlord testified the rental property has significantly deteriorated because of the conduct of the tenant and she is concerned as to the long term condition of the rental unit.
- The tenant constructed a 50 foot rock wall without permission. It was not dismantled until October 1, 2016.
- The tenant failed to cut the grass on a regular basis.
- The tenant built a fire pit without permission. This is a danger as it was close to the house. The fire pit was not dismantled until early October.
- The tenant stacked wood at the side of the garage.
- The tenant or person permitted in the property was smoking inside.
- The tenant had another person living in the rental property.
- The tenant used the hot tub without getting insurance.
- The tenant may have damaged the septic field when removing the stones
- The tenant failed to use the de-humidstat on a regular basis that has caused mould in the framing of the skylight.
- The tenant has failed to clean the siding on the north side of the rental unit.

The tenant disputed much of the landlord's claims. She testified the relationship between the parties was reasonable until the landlord attempted to collect an illegal rent increase. In particular the tenant testified as follows:

- The rock wall was attractive and installed by a mason. It was removed on October 1, 2016 after the tenant received the landlord's breach letter.
- The landlord failed to advise the tenant there was a septic system. She thought the rental unit was on city utilities. There is no evidence the septic system has been damaged. The truck removing the rocks did not come on the property in the area near the septic system.

- The tenant denies the driveway has been damaged.
- The fire pit was constructed in March 2015. The landlord never complained. The fire-pit was filled in on October 7 2016.
- She moved the wood pile.
- No one has smoked in the rental unit. Perhaps someone smelled smoke on the clothes of her son who visited for a short period.
- The tenant is not allowed to get hot tub insurance. That must be obtained by the landlord.
- There was mould in the skylight area when she moved in.
- The landlord never complained about anything except the grass until after the tenant refused to pay the illegal rent increase.
- She obtained tenant's insurance in September 2016. She is not allowed to get insurance for the hot tub.

#### Tenant's Application – Analysis:

The issue when considering the validity of a one month Notice to End Tenancy is whether the landlord has established sufficient grounds to end the tenancy on a balance of probabilities at the time the Notice was served.

After carefully considering all of the evidence I determined the landlord has established sufficient cause to end the tenancy as of the date of the Notice to End Tenancy based on the totality of issues for the following reasons:

- The tenant put the landlord's property at significant risk with the construction of the fire pit at the location it was constructed. At the time the Notice was served the fire pit still existed.
- The tenant constructed a 3 foot high rock fence that extended 50 feet without permission of the landlord. This put the landlord's property at significant risk. I amounted to the breach of a material term of the tenancy agreement and was not rectified within a reasonable time after being notified to do so.
- The Addendum provided that the Tenant was to obtain tenant insurance and supply a copy to the landlord. The tenant failed to obtain tenant's insurance for much of the tenancy. Further, she has failed to provide a copy of the insurance to the landlord. I do not accept the submission of the tenant that the failure of the landlord to provide her with a certificate prevented her from obtaining tenant's insurance as the tenant eventually obtained it. This put the landlord at significant risk.
- I determined the landlord failed to prove the tenant or someone permitted on the property by the tenant has smoked in the rental unit. This still

In summary I determined that the landlord has established sufficient cause to end the tenancy. As a result I ordered that the application of the tenant to cancel the one month Notice to End Tenancy be dismissed.

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.

Landlord Application - Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. The Tenant's application to cancel the one month Notice to End Tenancy has been dismissed. The landlord stated that at the hearing that if she was successful she would be content for the Order for Possession to be set for the end of December given that the hearing is nearing the end of November.

Accordingly, I granted an Order for Possession effective December 31, 2016. As the landlord has been successful I ordered that the Tenant pay to the Landlord the sum of \$100 for the cost of the filing fee such sum may be deducted from the security deposit.

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.

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 22, 2016



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R.A. Morrison, Arbitrator  
Residential Tenancy Branch