



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF, AS, MNDC, OLC, FF,

Introduction

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

- a. An Order for Possession pursuant to a one month Notice to End Tenancy dated June 21, 2017
- b. An order to recover the cost of the filing fee

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

- a. A monetary order in the sum of \$253.20.
- b. An order that the landlord comply with the Act, regulation or tenancy agreement
- c. An order to allow the tenant to assign or sublet because the landlord's permission has been unreasonably withheld.
- d. An order that allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided
- e. An order that the tenant 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. 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.

On July 18, 2019 the tenants filed an Amendment to their Application for Dispute Resolution which purported to increase the monetary claim for \$253 to \$9801. The additional claims included the following:

- \$7500 for breach of the covenant of quiet enjoyment
- \$600 to \$800 for moving cost and movers
- \$750 for damage deposit.

Rule 2.3 of the Rules of Procedure provide 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 claims in the Amendment were not related to the original Application for Dispute Resolution. Further, I determined that to allow the Tenants to proceed with those claims in this hearing would result in a breach of the rules of natural justice as the landlords have not had a sufficient opportunity to prepare. As a result I ordered pursuant to section 2.3 of the Rules of Procedure that the claims in the Amendment be severed from the within Application for Dispute Resolution with leave to reapply.

I find that the one month Notice to End Tenancy was personally served on the Tenants on June 21, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by the landlords was personally served on the Tenants on July 9, 2017. I find that the Application for Dispute Resolution filed by the Tenants was personally served on the landlords on June 9, 2017.

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to recover the cost of the filing fee?
- c. Whether the tenant is entitled to an order that the landlord comply with the Act, regulation and/or the tenancy agreement?
- d. Whether the tenant 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 1, 2017. The rent is \$1500 per month payable on the first day of each month. The tenants paid a security deposit of \$750 at the start of the tenancy.

Landlord's Application - Order of Possession:

I determined the landlord was entitled to an Order for Possession. The landlord served a one month Notice to End Tenancy on the Tenant on June 21, 2017. It is in the approved government form. The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired.

Section 47(4) and (5) provides as follows:

47(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Policy Guideline #36 includes the following:

Notice to End

Application for Arbitration Filed After Effective Date

An arbitrator may not extend the time limit to apply for arbitration to dispute a Notice to End if that application for arbitration was filed after the effective date of the Notice to End.

For example, if a Notice to End has an effective date of 31 January and the tenant applies to dispute said Notice to End on 1 February, an arbitrator has no jurisdiction to hear the matter ***even where the tenant can establish grounds that there were exceptional circumstances***. In other words, once the effective date of the Notice to End has passed, there can be no extension of time to file for arbitration.

I determined that as the Tenants failed to file an Application for Dispute Resolution to dispute the Notice to End Tenancy the tenants are conclusively presumed to the end of the tenancy. While the Notice to End Tenancy incorrectly set the effective end of tenancy date for June 21, 2017 the Act self corrects the incorrect date to the proper date. In this case it would be July 31, 2017. Further, an arbitrator does not have the jurisdiction to extend the time for the Tenants to file an application where the effective date of the Notice has passed. Accordingly, I granted the landlord an Order for Possession. The Tenants have an infant. I determined it was appropriate to set the effective date of the Order of Possession for 7 days after service rather than the usual one day.

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 the landlords have been successful I determined the landlords are entitled to recover the cost of the filing fee in the sum of \$100.

Tenants' Claim:

With respect to each of the Tenants claims I find as follows:

- a. Wifi was included in the tenancy agreement. I determined the tenants are the sum of \$67.20 for the period May 14, 2017 to June 12, 2017 and \$67.20 for the period June 13, 2017 to July 12, 2017 for the cost to purchase separate Wifi. The landlord accepted responsibility for these two bills. The tenants have established a claim against the landlords in the sum of \$134.40. I decline to order compensation for loss of internet after that date as the bills from the cable company were not included. The tenants retain the right to re-apply.
- b. I dismissed the claim for loss of work. A party is not entitled to compensation for loss of work to attend at the Residential Tenancy Branch. This is a cost of litigation. The only jurisdiction an arbitrator has relating to costs is the cost of the filing fee. Further, the tenant testified he lost work because he had to return home to deal with concerns of his significant other because the landlord reported them to the police. I determined loss of wages is not a matter related to tenancy and is not within the jurisdiction of an arbitrator.
- c. I dismissed the tenant's application of \$10 and travel costs to obtain a doctors note. This is a cost of litigation. The only jurisdiction an arbitrator has is the cost of the filing fee.
- d. I dismissed the tenants claim for laundry as the tenants failed to present sufficient proof of a monetary loss.

In summary I determined the Tenants have established a claim against the landlords in the sum of \$134.40 plus \$100 for the cost of the filing fee for a total of \$234.40.

I ordered the other claims filed by the Tenants be dismissed as they are merged with their monetary claims or they are moot as the tenancy is coming to an end.

Conclusion:

I granted an Order of Possession effective on 7 days notice.

The landlord has established a monetary claim against the Tenants in the sum of \$100. The tenants have established a monetary claim against the Landlords in the sum of \$234.40. After setting off one claim against that of the other I ordered that the Landlords pay to the Tenants the sum of \$134.40.

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: August 03, 2017

Residential Tenancy Branch