



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPN, MNR, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord sought the following relief: an Order of Possession based on a 1 Month Notice to End Tenancy for Cause; an Order of Possession based on a Tenant's notice to end tenancy; monetary compensation for unpaid rent; and, recovery of the filing fee.

The hearing was conducted by teleconference on October 12, 2017. Both parties called into the hearing. The Landlord was assisted by her brother, M.N., who spoke on her behalf.

Neither party submitted any evidence in respect of this application.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to monetary compensation for unpaid rent?
3. Should the Landlord recover the filing fee?

Background and Evidence

M.N. stated that they submitted the Landlord's Application for Dispute Resolution on June 15, 2017. A review of the branch records confirms that the Landlord applied for Dispute Resolution on July 28, 2017.

M.N. confirmed that they did not submit any evidence.

M.N. stated during the hearing that they served the Tenant with the Notice to End Tenancy by registered mail. On the Application for Dispute Resolution the Landlord wrote that the Tenant was personally served the Notice on July 15, 2017.

In the Details of Dispute section on the Landlord's Application, the Landlord made allegations about a Tenant by the name of J. This person was not named on the Landlord's Application. Further, neither party submitted a copy of the tenancy agreement to clarify the names of the tenant, or the tenants as the case may be.

In conclusion, M.N. stated that the Tenant has failed to pay rent for July, August, September and October.

The Tenant stated that she did not give notice to end her tenancy, nor did she receive a Notice to End Tenancy from the Landlord. The Tenant further stated that she has paid her rent, contrary to the Landlord's claims.

Analysis

The Landlord bears the burden of proving her claims on a balance of probabilities. As noted, the Landlord failed to submit any evidence in support of her claims.

Rules 2.5 and 3.1 of the *Residential Tenancy Rules of Procedure* relate to an Applicant's obligation to submit documentary evidence and provide as follows:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch directly or through a Service BC office, the applicant must submit:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on at the hearing.

3.1 Documents that must be served with the hearing package

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Application for Dispute Resolution;
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC office with the Application for Dispute Resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*].

In failing to file any evidence in support of her claim, and in particular failing to provide a copy of the Notice to End Tenancy, the Landlord has failed to follow the above *Rules*.

Further, it is also notable that upon filing the Application for Dispute Resolution, the Landlord was provided a letter dated July 31, 2017 titled “Notice of Dispute Resolution Hearing” upon which the following is clearly noted:

GENERAL INFORMATION about your responsibility and the hearing

1. Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.

Despite these clear instructions, the Landlord failed to submit any documentary evidence; as a result, the only evidence before me was the conflicting testimony of the parties.

The Landlord sought an Order of Possession claiming the tenant gave notice to end the tenancy. The Tenant denied giving such notice. Without documentary evidence I am unable to reconcile this conflicting testimony. Further, section 45 of the *Residential Tenancy Act* provides that to be effective, a Tenant’s notice must be in writing. The Landlord failed to submit a copy of such written notice; and as such, I find the Landlord

has failed to prove her entitlement to an Order of Possession based on a tenant's notice to end tenancy.

Similarly, I find the Landlord has failed to prove her claim for an Order of Possession based on the 1 Month Notice to End Tenancy. As discussed, the Landlord failed to provide a copy of this Notice. Consequently, I was not able to review the document as to form and content, as required by section 52 of the *Act*. Similarly, the Landlord failed to indicate the reasons cited on the Notice, and failed to submit any evidence in support of their request to end the tenancy. The Landlord's submissions were also inconsistent in terms of service of the Notice; and, the Tenant denies receiving the Notice. Consequently, I am unable to find the Tenant was served the Notice. For these reasons, I find that the Landlord has failed to meet the burden of proving the tenancy should end for the reasons cited on the Notice; and I dismiss the Landlord's request for an Order of Possession based on the Notice.

The Landlord also failed to provide any evidence to support her claim for monetary compensation in the amount of \$850.00. Neither party submitted a copy of the tenancy agreement to confirm the amount of rent payable. Further, the Landlord's brother stated that the Tenant failed to pay rent, yet the Tenant stated that she had paid rent. Without documentary evidence I am unable to reconcile the conflict in the parties' testimony.

Conclusion

The Landlord's claim is dismissed in its entirety. As the Landlord has been unsuccessful, I also dismiss her claim for recovery of the filing fee.

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: October 12, 2017

Residential Tenancy Branch