



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, OLC, RR, DRI

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the 10 day Notice to End Tenancy dated December 6, 2017
- b. An order that the landlord comply with the Residential Tenancy Act, Regulations and/or tenancy agreement
- c. An order to reduce rent for repairs, services or facilities agreed upon but not provided?
- d. An order to dispute a rent increase that is above the amount allowed by law.

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 10 day Notice to End Tenancy was served on the Tenant by placing it in their mailbox on December 6, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on December 14, 2017. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated December 6, 2017?
- b. Whether the tenant is entitled to an order that the landlord comply with the Residential Tenancy Act, Regulations and/or tenancy agreement?
- c. Whether the tenant is entitled to an order to reduce rent for repairs, services or facilities agreed upon but not provided?
- d. Whether the tenant is entitled to an order to dispute a rent increase that is above the amount allowed by law?

Background and Evidence:

In late June 2017 the parties entered into a two year fixed term tenancy agreement that provided that the tenancy would commence on July 1, 2017 and end on June 30, 2019. The tenancy agreement provided that the tenant(s) would pay rent of \$2800 per month payable in advance on the first day of each month. It also provided that the tenants would pay a security deposit was \$2800.

In early July the tenants advised the landlord that the amount of the security deposit was not permitted by the Residential Tenancy Act. The landlord produced evidence from his bank of an e-transfer showing that he returned \$1400 to the tenants (1/2 of the security deposit) on July 3, 2017.

The landlord gave the tenants access to the rental property prior to the start date. Initially the tenants advised the landlord they were satisfied with the condition of the rental unit. As a result he returned the security deposit to the previous tenant. However, in early July the tenants complained about the rental unit no being properly cleaned. The landlord produced evidence from his bank of an e-transfer showing that he paid the tenants \$1400 on July 5, 2017 to compensate them for their inconvenience and cost of cleaning. The tenant denies receiving this sum.

The rent for August was paid in full.

The landlord testified the tenants withheld \$800 of the rent for September. The landlord had a suite downstairs which he used to house family members. The Tenants objected saying there should be a sharing of utilities. Eventually the parties agreed that the Tenants could deduct \$80 per month for July, August, September and October 2017 for a total of \$320. The landlord testified the tenants owe \$480 for September. The tenant testified they withheld \$400 in September and that only \$80 is owed

The landlord testified the tenant failed to pay the rent for October 2017 (\$2800 is owing), November 2017 (\$2800 is owing), December 2017 (\$2800 is owing) and January 2018.

The landlord gave the following evidence to support the allegation the tenants failed to pay the rent:

- Receipts for the rent that was paid.
- An audio tape of a meeting in late November where the applicant's husband acknowledges the sum of \$8800 is owed and assuring the landlord that they were in the process of getting a line of credit and the rent would be paid.
- A letter prepared by the landlord which was not signed by the Tenants where the landlord was attempting to get the tenants to agree to a re-payment schedule. The letter also includes a handwritten portion where the tenants agreed to pay the landlord

an additional \$180 for interest on top of the rent. This was to compensate the landlord for interest based on the non-payment of rent when due.

- Copies of the landlord's bank statement when indicate the tenant failed to make e-transfer of the rent to the landlord's account as alleged and the landlord did not deposit monies totalling the rent amount for October 2017, November 2017, December 2017 and January 2018.
- The landlord testified the tenants told him they were unable to pay the rent because a family member had died in their home country and they had to send money. Further Revenue Canada had frozen their accounts.
- An exchange of text messages between the tenant and the landlord starting with a text from the tenant on November 14, 2017 attempting to set up a meeting for November 23 or 24 and indicating they could pay the landlord at that time, followed by texts messages from the landlord indicating the amount owing and requesting a part payment earlier than that.

The tenant provided a witness statement which states the rent is up to date with payments by e-transfers and cash. At the hearing she testified she paid the rent in cash when due and the rent has been fully paid. She acknowledged the rent for January 2018 has not been paid. She also produced witness letters from her two sons that state "I confirm that rent payments to the landlord were made in cash and e-transfer transactions, that I have contributed to those payments myself and have witnessed the transactions."

Analysis:

In *Faryna v. Chorny*, [1952] 2 D.L.R. 354, the B.C. Court of Appeal set out the following test for assessing credibility:

"The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carries conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. (page 357)"

After carefully consider all of the evidence I determined the evidence of the landlord is to be preferred to that of the tenant. I found the tenant's testimony was not credible for the following reasons:

- The landlord's testimony as to the rent payments was detailed and supported by other documents including banking documents which are kept in the ordinary course of business.

- The banking documents produced by the landlord show that rent was not paid by the Tenant by e-transfers.
- The audio tape provided by the landlord of a meeting between the parties in late November provides the applicant's husband acknowledged that rent was owed totalling for the months in question. The tenant ignored this evidence and did not dispute it during the hearing. The tenant did not respond to the landlord's testimony that tenants told him the reason they could not pay the rent when due was because of a death in the family (they had to send money home) and Revenue Canada freezing their bank accounts.
- I found the tenant's testimony to lack the precision necessary to be credible. Her initial statement in her materials and her two witness statements provide the rent was paid by e-transfer and cash. There is no evidence to support the allegation of a payment by e-transfer.
- The witnesses relied on by the tenant did not attend the hearing to give live testimony. I determined the statements in the witness statements are not credible. There is no evidence or an e-transfer. The statements lack any precision on the payment of rent by cash.
- The exchange of text messages in the last two weeks of November support the landlord's testimony.

In conclusion I determined the evidence of the tenant that she has paid the rent is not credible. I find that the tenant owes the sum of \$480 in rent for September (after the agreed \$80 per month for 4 months utility share has been deducted), \$2800 for October 2017, \$2800 for November 2017, \$2800 for December 2017 and \$2800 for January 2018.

Tenant's Application to Cancel the 10 day Notice to End Tenancy::

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice.

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 on 2 days notice.

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.

Tenant's Application for an Order that the landlord comply with the Act, regulation and/or tenancy agreement:

I dismissed the tenant's application for the landlord comply with the Act, regulations and/or tenancy agreement. While the landlord mistakenly charged the tenant a security deposit in an amount not permitted by the Act, the overcharge was returned to the tenant within 3 days of the start of the tenancy. The Application for Dispute Resolution claims that the landlord does not want to cover any utilities by the other tenants in the half of the house as they are family member. The evidence indicates the parties agreed the tenant could deduct \$80 a month for the 4 months the landlord's family was in the rental unit.

The Application for Dispute Resolution states the tenancy agreement states that "I am not responsible for the yard or pool maintenance." This is not accurate. The tenancy agreement indicates the provision which states the tenants would pay the landlord an additional \$350 per month for pool maintenance has been crossed out. I accept the testimony of the landlord that he was going to charge the additional \$350 to hire a pool maintenance company to maintain the pool but the tenants objected stating they could maintain the pool if they did not have to pay the additional sum.

Tenant's Application to Reduce the Rent for repairs, services or facilities agreed upon but not provided.

I dismissed the tenant's claim for an order to reduce the rent. The tenants submitted 34 photos which show problems with the rental unit and work she did not clean it,. The tenant did not raise problems with the rental unit when they took possession and assured the landlord the rental unit was satisfactory. The landlord relied on this representation and returned the security deposit of the previous tenant. Further I determined the landlord reimbursed \$1400 to the tenant (by e-transfer on July 5, 2017) which more than compensate the tenant for the work to clean the rental unit. This payment was made by the landlord on July 5, 2017 and is in addition to payment of the landlord of \$1400 for the overpayment of the security deposit. I do not accept the testimony of the tenant that she did not receive this payment.

I dismissed the tenant's claim for the cost of yard maintenance and pool maintenance as the tenant failed to prove the landlord agreed to be responsible for these matters and the work allegedly done by the Tenant.

Tenant's Application for an order disputing an additional rent increase that is above the amount permitted by the Act.

I dismissed the Tenant's application for an order disputing an additional rent increase that is above the amount permitted by the Act as the tenant failed to prove that the landlord demanded or received such an additional rent increase.

Conclusion:

In conclusion I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy. I granted an Order of Possession on 2 days notice. I dismissed the tenant's application for an order that the landlord comply with the Act, regulations and/or tenancy agreement, an order for a reduction of rent and an order disputing an addition rent increase that is above the amount allowed by the Act and regulations.

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: January 18, 2018

Residential Tenancy Branch