



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant CNC
Landlord OPL, OPB, MNSD, FF, ET

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession, an early end to the tenancy, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed seeking an Order to cancel the Notice to End Tenancy.

Service of the hearing documents by the Landlord to the Tenants were done by personal delivery on September 20, 2011, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by personal delivery on September 14, 2011, in accordance with section 89 of the Act.

At the beginning of the conference call the Tenants said they moved out of the rental unit on October 16, 2011 and they were going to tell the Landlord they had moved out and return the keys after the meeting today. The Landlord said he understood the Tenants had moved out. The Tenants said to cancel their application.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to end the Tenancy?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is the Landlord entitled to retain the Tenant's security deposit?

Background and Evidence

This tenancy was to start on September 1, 2011 as a month to month tenancy. Rent was \$900.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$450.00 at the end of August, 2011.

The Landlord said he issued a 1 month Notice to End Tenancy dated September 6, 2011, for a material breach of the tenancy agreement. The material breach was the Tenants' had 5 or 6 cats in the rental unit and the tenancy agreement stated no pets were allowed. The Landlord said he realizes the Tenants have moved out, but he still wanted to request an Order of Possession because the Tenants have not returned the keys to the rental unit. The Landlord continued to say his main concern now is the Tenant did not pay the rent for October, 2011 of \$900.00. The Tenants said they did not pay the rent for October, 2011 as they got the Landlord's Eviction Notice on September 6, 2011, so they did not pay the rent.

Analysis

Section 26 of the Act says 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.

The Tenant did not have the right under the Act to withhold part or all of the rent for October, 2011, I find in favour of the Landlord for the unpaid rent of \$900.00 for the October, 2011 rent.

In addition as the Tenants have moved out of the unit and have cancelled their application to dispute the Notice to End Tenancy I award the Landlord an Order of Possession with an effective vacancy date of October 17, 2011.

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As the Landlord have been successful in this matter, he is also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit of \$450.00 in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 900.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$ 950.00
Less:	Security Deposit	\$ 450.00
	Subtotal:	\$ 450.00
	Balance Owing	\$ 500.00

Conclusion

An Order of Possession effective October 17, 2011 and a Monetary Order in the amount of \$500.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenants' application is cancelled as per the Tenants' request.

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*.

Residential Tenancy Branch