



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application filed by the landlord seeking a monetary order and recovery of the filing fee paid for this application.

The landlord appeared at the hearing of this matter. The tenant did not appear. The landlord gave evince that he served notice of this hearing by way of registered mail sent November 9, 2011. I accept this evidence and find that the tenant has been properly served as required by the Act.

The Landord gave evidence under oath.

Issue(s) to be Decided

Is the landlord entitled to the Orders sought?

Background and Evidence

In a decision rendered August 17, 2011 the landlord was granted a monetary award for unpaid rent and an Order of Possession effective 2 days after service on the tenant. The Order of Possession was served on the tenant but the tenant did not vacate. On September 28, 2011 the landlord obtained a Writ of Possession from the Supreme Court of British Columbia. The landlord retained the services of a bailiff and on October 12, 2011 the bailiff attended to remove the tenant's goods. However, on the same day the tenant appeared in the Supreme Court seeking a stay to the Writ of Possession. The landlord submits that he had no knowledge of this application and later learned that the tenant presented fraudulent evidence in the form of a note which he said was signed by the landlord's property manager stating that the proper manager had accepted rent for September and October 2011. The Supreme Court stayed the Writ of Possession. However, by the time the landlord was aware of the stay of proceedings, the bailiffs had taken already taken possession of the rental unit. The respondent secretly and unlawfully gained access to the rental unit and changed the locks on the evening of

October 12, 2011. On October 14, 2011 the parties appeared before the Honourable Mr. Justice McEwan who ordered that the respondent had until 4 pm on October 21, 2011 to apply to the Residential Tenancy Branch to review the disputed facts. The honourable Mr. Justice McEwan held that should the tenant fail to obtain a decision in his favour he must vacate by 4 pm on October 21, 2011. The tenant did apply for review and that review was denied. Eventually after several discussions with the tenant and exchanges between lawyers the tenant moved out peacefully on October 21, 2011.

The landlord says the tenant did not pay rent for either September or October 2011 even though he did not vacate until October 21, 2011. The landlord is claiming rent for those months.

The landlord is also claiming costs for the Supreme Court filing fees, bailiff's services, cleaning costs and recovery of the filing fee paid for this application.

The landlord retains a security deposit of \$985.00 which he is also seeking to retain and a cash payment made by the tenant in the sum of \$3,940.00 which the tenant says should be deducted from any monetary award made.

Analysis

Based on the undisputed evidence of the landlord I find the landlord is entitled to a monetary award as follows:

| | |
|--|------------|
| Bailiff's Fees | \$3,180.28 |
| Rent for September and October (\$1,970.00 per month = \$3,940.00 but the landlord's application seeks \$3,304.51) | 3,304.51 |
| Cleaning and repair costs | 588.00 |
| Residential Tenancy Branch filing fees | 100.00 |
| Total monetary award in favour of landlord | \$7,271.27 |

The landlord holds a security deposit of \$985.00 and a cash payment made by the tenant of \$3,940.00, which, together total \$4,925.00. I will allow the landlord to retain the security deposit (no interest has accrued) and deduct the cash payment the tenant has already made leaving a balance owing by the tenant to the landlord in the sum of \$2,346.27.

Conclusion

The landlord is provided with an Order in the above terms. The tenant must be served with a copy of that Order. If the tenant does not pay the sum set out in the Order the Order may be enforced as an Order of the Provincial Court of British Columbia, Small Claims Division.

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 26, 2012.

Residential Tenancy Branch