



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, CNR, MNDC, MDSD & FF

Introduction

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 sufficiently served on the Tenant by posting on May 17, 2013. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by each party was sufficiently served on the other by mailing, by registered mail. With respect to each of the applicant's claims I find as follows:

Issue(s) 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?
- b. Whether the Tenant is entitled to a monetary order and if so how much?
- c. Whether the Tenant is entitled to an recover the cost of the filing fee?
- d. Whether the landlord is entitled to an Order for Possession?
- e. Whether the landlord is entitled to A Monetary Order and if so how much?

- f. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- g. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

On April 7, 2013 the parties entered into a 6 month fixed term tenancy that provided that the tenancy was to start of April 8, 2013, end on October 31, 2013 and that the tenant would have to move out of the residential unit at that time. The rent was \$1850 per month payable on the first of the month. The tenant paid a security deposit of \$925 at the start of the tenancy.

The tenant paid the rent for the balance of April. The parties agree that the tenant made an \$82 overpayment.

The parties disagreed as to how the rent was to be paid. The landlord wanted the rent to be paid by cheque. The tenant testified that he wanted to pay by cash and demanded that the landlord give him a receipt. A few days later the landlord texted the Tenant and also emailed him stating she was prepared to accept a cash payment and a receipt would be given.

The tenant has not paid. The landlord served a 10 day Notice to End Tenancy on the Tenant. The tenant failed to pay the arrears within the 5 days that would void the Notice. The tenant(s) have remained in the rental unit.

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

The landlord did not have a legal right to require the Tenant to pay by cheque as such a requirement was not included in the tenancy agreement. The landlord subsequently agreed to accept payment by cash and a receipt would be given. The tenant failed to pay the arrears within the 5 days that would void the Notice. There is no basis to cancel the 10 day Notice. The tenant's application to cancel the 10 day Notice is dismissed.

However, the tenant is entitled to recover the \$82 overpayment made for April to further rent.

Landlord's Application - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant's application to cancel the 10 day Notice was dismissed. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Accordingly, 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.

Analysis - Monetary Order and Cost of Filing fee

I determined the tenant has failed to pay the rent for the month(s) of May and June and the sum of \$3700 remains outstanding. However, the tenant has made an overpayment of \$82. Thus the sum of \$3618 remains owing. I determined the landlord has given sufficient notice of their intention to claim for all of last month as provided in the Application for Dispute Resolution. I granted the landlord a monetary order in the sum of \$3618. As the tenancy may be reinstated I declined to consider the landlord's claim for the security deposit. The landlord has the right to re-apply and has the right to apply the security deposit to any monetary order that the tenant has not paid.

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.

Settlement:

At the end of the hearing the parties reached a settlement and they asked that I record the settlement as follows:

- a. The parties acknowledge that the Tenant owes the Landlord the sum of \$3618 in outstanding rent for May and June 2013.
- b. The Tenant represents that he will pay this sum in cash to the landlord at the landlord's place of business by 12:00 noon on Friday, June 7, 2013 on the condition that the landlord provide a receipt.
- c. The parties waive their claim for the cost of the filing fee in their respective Application for Dispute Resolution.
- d. The landlord withdraws its claim for \$200 for damage to the door on a without prejudice basis and has liberty to re-apply if the damage is not fixed.
- e. The landlord shall reinstate the tenancy and shall not take steps to enforce the Order for Possession if the Tenant pays the arrears as provided in this settlement as set out above.

I dismissed the Tenant's claim that the tenancy agreement contains an illegal term if the tenant failed to provide references as that issue is moot. I dismissed the tenant's request to deal with the owner rather than the owner's agent. The owner has the right to hire who ever he wants to deal with his affairs. As a courtesy to the parties I have included the provision of the Residential Tenancy Act dealing with assignments and sublets.

Assignment and subletting

- 34** (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.
- (2) If a fixed term tenancy agreement is for 6 months or more, the landlord must not unreasonably withhold the consent required under subsection (1).

(3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

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: June 05, 2013

Residential Tenancy Branch