



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MDSD & FF

Introduction

A hearing was conducted by conference call in the presence of a representative of the applicant and in the absence of the respondents. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the Notice to End Tenancy was personally served on the Tenant SM on October 5, 2013. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the Tenant SM on October 23, 2013. I find the Application for Dispute Resolution was served on the tenant DO by posting on October 23, 2013. The Residential Tenancy Act provides that posting is sufficient service for the purpose of obtaining an Order for Possession but it is an insufficient method of service for the purpose of obtaining a monetary order (which must be personally served or served by registered mail to where the tenant resides). 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 landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on July 1, 2013 and end on June 30, 2013. The rent is \$1050 per month payable on the first day of each month. The tenants paid a security deposit of \$550 at the start of the tenancy.

The tenants got into a fight with each other and OD was removed and incarcerated. SM paid half of the rent for October. He vacated the rental unit. The rent for November has not been paid. The landlord has not been able to regain possession of the rental unit. I determined the sum of \$1600 remains outstanding which includes rent of \$550 for October (including a \$25 late fee) and \$1050 for November.

Analysis

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. 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

The landlord has sufficiently served the tenant SM for the purpose of obtaining a monetary order but he was not able to serve DO. As a result the application for a monetary order against DO is dismissed with liberty to re-apply.

I determined the tenants have failed to pay the rent for October (\$550 is owed including a \$25 late fee) and November (\$1050 is owed) and the sum of \$1600 is outstanding. I granted the landlord a monetary order against SM in the sum of \$1600 plus the sum of \$50 in respect of the filing fee for a total of \$1650.

Security Deposit

I determined the security deposit plus interest totals the sum of \$525. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$1125.

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.

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: November 28, 2013

Residential Tenancy Branch

