



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dole Ent. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, OPB, MND, MNDC, MNSD, FF, CNC

Introduction

There are applications filed by both parties. The Landlord seeks an order of possession for cause and for breach of an agreement, a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee. The Tenant seeks an order cancelling the notice to end tenancy issued for cause and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The Tenant confirms receiving the Landlord's notice of hearing package and the submitted documentary evidence. The Landlord disputes receiving the Tenant's notice of hearing package. The Tenant states that the notice of hearing package was sent by Canada Post Registered Mail and has provided in his direct testimony the Customer Receipt Tracking number. The Landlord is adamant that no notice was received. Upon review of the Canada Post website for online tracking, no details were provided to show that the Tenant served the Landlord with the package or that it was by Registered Mail as no signatures were given.

I am satisfied that the Tenant was properly served with the Landlord's notice of hearing package based upon the Tenant's direct testimony. I find on a balance of probabilities that the Tenant has failed to properly serve the Landlord with the Tenant's notice of hearing package and as such, dismiss the Tenant's application for lack of service.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?
Is the Landlord entitled to a monetary order?
Is the Landlord entitled to retain the security deposit?

Background and Evidence

This tenancy began on May 1, 2013 on a fixed term tenancy ending on April 30, 2014, as per the submitted copy of the signed tenancy agreement. The monthly rent is \$930.00 payable on the 1st of each month and a security deposit of \$470.00 was paid on April 14, 2013.

Both parties confirmed that the Landlord served the Tenant with a 1 month notice to end tenancy issued for cause dated January 25, 2014. The notice displays an effective end of tenancy date of February 28, 2014. The notice also states that 3 reasons for cause were selected.

- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

- Tenant has caused extraordinary damage to the unit/site or property/park.

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord states that as no application for dispute resolution was filed within the allowed 10 day timeframe and that the Tenant has failed to vacate the rental unit, the Landlord is entitled to an order of possession.

The Landlord seeks a monetary order for \$1,575.00 for damages caused to the rental property by the Tenant due to water flooding. The Tenant confirms that he left the water on in his shower that caused a flood, however the Tenant disputes the amount sought by the Landlord. The Landlord relies on an invoice from Reeves Painting for \$1,575.00. The invoice details water damage repairs. Both parties agreed that the Tenant performed some demolition to speed up the renovation process. The Landlord states that there was more damage, but is only seeking this portion for their claim.

Analysis

I accept the testimony of both parties and find that the Tenant has failed to apply for dispute resolution within the allowed timeframe. The Tenant is conclusively presumed to have accepted that the Tenancy was at an end. The Landlord is granted an order of possession. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As for the monetary claim, on a balance of probabilities the Landlord has established a claim for \$1,575.00 in damages for water flooding. The Tenant confirmed in his direct testimony that flood damage occurred due to his negligence in failing to shut off the water. The Landlord has provided an invoice for the amount claimed stating that they are only seeking compensation for the cost of drywall and painting. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain \$470.00 from the security deposit as partial satisfaction of the claim and I grant a further monetary order under section 67 for the balance due of \$1,155.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted an order of possession and a monetary order for \$1,155.00. The Landlord may retain the security deposit.

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: March 26, 2014

Residential Tenancy Branch

