



Dispute Resolution Services

Page: 1

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 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 Notice to End Tenancy was sufficiently served on the Tenant by posting on January 2, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenant by mailing, by registered mail to where the Tenant resides on January 20, 2014. 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

On March 30, 2013 the parties entered into a written tenancy agreement that provided the tenancy would commence on March 30, 2013 and continue on a month to month basis with the rent set at \$500 per month payable in advance on the 28th day of each month. The tenant paid a security deposit of \$250 at the start of the tenancy.

The tenant had exclusive possession of his room and he shared the kitchen, laundry, washroom etc. There are eight rooms in the rental property. The tenant objected to the inability of the landlord to evict another tenant who was a drug addict and behaving inappropriately. The tenant paid \$130 in rent for January leaving a balance of \$370.

The tenant failed to pay the rent for February and as a result the landlord changed the locks on the tenant thereby denying him access to the rental unit. The tenant testified he has been living in shelters, hostels and on the streets since then.

The landlord objects to the tenant's failure to remove his belongings. Many of belongings have been left outside and stored in her garage.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent for January 2014. 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

I determined the tenant has failed to pay the rent for the month(s) of January and the sum of \$370 remains outstanding. The tenant had the use of the rental unit for January. I dismissed the landlord's claim for a monetary order for non-payment of rent for February and March as the landlord acted illegally in changing the locks and denying the tenant access to the rental unit. The tenant has not had the benefit of the rental unit during this period and the landlord is not entitled to recover the loss of rent for February and March. The claim for loss of rent for February and March is dismissed.

I granted the landlord a monetary order in the sum of \$370 plus the sum of \$50 in respect of the filing fee for a total of \$420.

Security Deposit

I determined the security deposit plus interest totals the sum of \$250. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$170.

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.

The tenant's belongings are still on the rental property. The parties are encouraged to talk to an information officer at the Residential Tenancy Branch or their own solicitor to determine their respective rights.

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 05, 2014

Residential Tenancy Branch

