



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 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 March 6, 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 March 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

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on December 1, 2013, end on November 30, 2014 and become month to month after that. The rent is \$830 per month payable on the first day of each month. The tenant also agreed to pay \$10 a month for a storage locker and \$25 for a NSF fee. The tenant paid a security deposit of \$415 at the start of the tenancy.

The tenant failed to pay the rent for March when due. He subsequently paid \$1000 on April 4, 2014 which was after the 5 days that would void the Notice. The landlord accepted the payment for “use and occupation only.”

The tenant(s) failed to pay the rent for the months of April and May and the sum of \$1620 remains owing including rent, \$20 for storage fee and \$50 NSF fees (for April and May @ \$25 per month). The tenant(s) have remained in the rental unit.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. While the Tenant paid the arrears for March it was paid after the 5 days that would void the Notice and the payment was accepted by the landlord for “use and occupation only” and did not reinstate the tenancy. The Tenant has 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 effective May 31, 2014.

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 April and May and the sum of \$1620 remains owing including rent, \$20 for storage fee and \$50 NSF fees (for April and May @ \$25 per month). **I granted the landlord a monetary order in the sum of \$1620 plus the sum of \$50 in respect of the filing fee for a total of \$1670.**

Security Deposit

I determined the security deposit plus interest totals the sum of \$415. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$1255.

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: May 09, 2014

Residential Tenancy Branch

