



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR & 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 August 5, 2014. I find that the Application for Dispute Resolution filed by the tenant was personally served on the landlord on August 12, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by the landlord was sufficiently served on the tenant by mailing, by registered mail to where the tenant resides on September 25, 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 tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated August 5, 2014
- b. Whether the tenant is entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to an Order for Possession?
- d. Whether the landlord is entitled to A Monetary Order and if so how much?
- e. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a 6 month fixed term written tenancy agreement that provided that the tenancy would start on February 1, 2014, proceed for 6 months and become month to month after that. The rent is \$850 per month payable on the first day of each month. The tenant paid a security deposit of \$425 at the start of the tenancy.

The landlord alleged the tenant failed to pay the rent for July. The tenant disputes this. She testified she paid the rent for July but the landlord failed to give her a receipt. After considering the disputed evidence I determined the landlord failed to prove there is arrears of rent for July for the following reasons:

- The landlord failed to present an accounting, receipt book or other documentary evidence kept contemporaneous with the rent payment which would show when the rent was paid for what months.
- The Notice to End Tenancy dated August 5, 2014 alleges \$850 is owing which was due on August 1, 2014. If the rent for July was owed as well as the rent for August one would have expected the Notice to End Tenancy would allege the rent for July and August is owing totaling \$1700.
- There is no evidence the landlord served a Notice to End Tenancy in July as one would expect if the rent for July is owed.
- The person who signed the Notice to End Tenancy and named landlord did not appear at the hearing and give evidence.

I determined the tenant has failed to pay the rent for August (\$850 is owed), September (\$850 is owed) and October (\$425 is owed for the period October 1, 2014 to October 15, 2014). I determined it was not appropriate to give the landlord a monetary order for all of October as it is possible the landlord will re-rent the rental unit and not suffer a loss. The tenant(s) have remained in the rental unit.

Tenant's Application:

I dismissed the tenant's application to cancel the Notice to End Tenancy dated August 5, 2014 and to recover the cost of the filing fee as there is no basis to cancel the Notice. The Notice to End Tenancy is valid and the rent is owed.

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 set aside the Notice to End Tenancy has been 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 August (\$850 is owed), September (\$850 is owed) and October (\$425 is owed for the period October 1, 2014 to October 15, 2014). I determined it was not appropriate to give the landlord a monetary order for all of October as it is possible the landlord will re-rent the rental unit and not suffer a loss. **In summary I ordered that the Tenant pay to the Landlord the sum of \$2125 plus \$50 for the cost of the filing fee for a total of \$2175.** If the landlord is unable to rent the rental unit for the balance of October the landlord is at liberty to make a further claim for loss of rent for the period October 16, 2014 to October 31, 2014.

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: October 09, 2014

Residential Tenancy Branch

