



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, RP, FF, 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 10 day Notice to End Tenancy was personally served on the Tenants on September 5, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was sufficiently served on the Tenants by mailing, by registered mail to where the tenants reside on September 30, 2014. I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenants was personally served on the landlord on September 12, 2014.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling the 10 day Notice to End Tenancy dated September 5, 2014?
- b. Whether the tenants are entitled to a monetary order and if so how much?
- c. Whether the tenants are entitled to a repair order?
- d. Whether the tenants are entitled to recover the cost of the filing fee?
- e. Whether the landlord is entitled to an Order for Possession?

- f. Whether the landlord is entitled to A Monetary Order and if so how much?
- g. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- h. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on April 18, 2014. The rent is \$800 per month payable in advance on the 18th day of each month. The tenants paid a security deposit of \$400 at the start of the tenancy. In July 2014 the parties agreed the rent was to be payable on the first day of each month commencing August 1, 2014.

The tenant(s) failed to pay the rent for the months of September and October the sum of \$1600 remains owing. The tenant(s) have remained in the rental unit.

Tenants Application:

Application to Cancel the 10 day Notice to End Tenancy:

The tenants acknowledge that they have not paid the rent for September and October. The tenants submit they are entitled to compensation for the landlord and they withheld the payment of the rent. Section 26(1) of the Residential Tenancy Act provides as follows:

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I determined the tenants did not have a legal right to withhold the rent. The Notice to End Tenancy is valid. As a result I dismissed the tenants' application. The tenancy shall end in accordance with the Notice to End Tenancy.

Tenant's Application for a monetary order

The tenants seek compensation for the following:

- The tenant testified they were without hot water for 5 days.
- The tenant testified the heat was turned off for much of August and September and for the remainder of the period the heat did not kick on until after they left in the morning.
- The front porch light was not working for the period of August 4, 2014 to September 24, 2014. She testified her 29 year old fell and injured herself.
- The landlord refused to give them access to the basement.

The landlord responded stating that the tenancy agreement did not provide the tenants with the use of the basement. She initially gave them access as a gesture of good will. She further testified that she turned the hot water down as the tenant's two sons and girlfriend left after visiting. It was not necessary to be as hot as before as there were fewer people using it. The heat consumption is the same as last year where the tenant did not complain. Further, there was no need for heat until well into September at the earliest. The tenant failed to advise the landlord of the problems with the porch light and she responded within a reasonable time repairing the fix made by the tenant.

After considering the disputed evidence I determined the tenants are entitled to compensation in the sum of \$150. The landlord acknowledged reducing the heat for the hot water. Further, I am satisfied the landlord was aware the tenants were having difficulty with sufficient heat after she received the tenant's application but failed to respond appropriately. I do not accept the submission these tenants should be compensated for injury to their adult daughter for the lack of a functioning front porch light. There daughter may have a claim but these tenants are not entitled to compensation for her injuries. I determined the remaining claims of the tenants for a reduction of rent have not been proven and accordingly they are dismissed.

In summary I determined the tenants have established a claim against the landlord in the sum of \$150 plus \$50 for the cost of the filing fee for a total of \$200.

Landlord's Claim:

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenants' application for an order to set aside the 10 day Notice to End Tenancy has been dismissed 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 September and October and the sum of \$1600 remains outstanding. I granted the landlord a monetary order in the sum of \$1600 plus the sum of \$50 in respect of the filing fee for a total of \$1650.

I determined the tenants have established a claim against the landlord in the sum of \$200. I determined the landlord has established a claim against the tenant in the sum of \$1650. **After setting off one claim against that of the other I ordered the tenants to pay to the landlord the sum of \$1450.**

Security Deposit

I determined the security deposit plus interest totals the sum of \$400. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$1050.

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 31, 2014

Residential Tenancy Branch

