



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, 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.

The landlord testified she served a one month Notice to End Tenancy dated July 31, 2014 on the tenant in person on July 31, 2014. The tenant testified he was never served. The landlord further testified she served a 10 day Notice to end Tenancy on the Tenant. I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the tenant on September 8, 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 recover the cost of the filing fee?

Background and Evidence

The parties entered into an oral tenancy agreement on January 1, 2012. The rent was set at \$600 per month payable in advance on the first day of each month. The tenant alleged the parties subsequently agreed to accept a lesser sum. The tenant paid a security deposit of \$300 at the start of the tenancy. The tenant testified this was applied to outstanding rent. The tenant disputes this.

There is an ongoing dispute between the parties. The landlord's application for an early end to the tenancy was dismissed in a decision dated September 16, 2014.

The landlord alleges the tenant owes over \$1200 in outstanding rent. The tenant disputes the amount of outstanding rent although he acknowledged that he owes \$340. The landlord has not provided an accounting and it is not possible based on the documents submitted to determine how much is owed for what months. This is prejudicial to the tenant as he has not been given proper notice.

The tenant has filed a claim against the landlord for a monetary order in the sum of \$10,000. That hearing is set before another arbitrator at the end of October. The tenant alleges the landlord has made false reports to the Ministry with respect to his child which has resulted in the Ministry refusing to pay an additional sum for his daughter. It has also involved criminal proceedings against him.

The tenant did not apply to cancel the Notices to End Tenancy in his applications.

Relevant Law:

As a courtesy to the parties I have included some relevant provisions of the Residential Tenancy Act. 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.

Section 47(4) and (5) of the Residential Tenancy Act provides as follows:

Landlord's notice: cause

47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

A similar provision is found in section 46 dealing with a Notice to End Tenancy for non-payment of rent.

Settlement:

This is a disputed matter. At the end of the hearing the parties reached a settlement and they asked that I record the settlement pursuant to section 63(2) of the Residential Tenancy Act as follows:

- a. The parties mutually agree to end the tenancy on November 30, 2014.
- b. The parties request the arbitrator to issue an Order for Possession for November 30, 2014.
- c. The landlord's claim for non-payment of rent is dismissed with liberty to re-apply.
- d. The tenant's claim as set out in his Application for Dispute Resolution shall proceed as scheduled at the end of October.

Analysis - Order of Possession:

As a result of the settlement between the parties I granted an Order for Possession effective November 30, 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.

The landlord's claim for a monetary order is dismissed with liberty to re-apply. The landlord must file a new Application for Dispute Resolution to bring this claim. The claim to recover the cost of the filing fee in this proceeding is dismissed.

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 24, 2014

Residential Tenancy Branch

