



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, 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 personally served on the Tenant on October 5, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was sufficiently personally served on the tenant by mailing, by registered mail to where the tenant reside on October 27, 2014. I find the Application for Dispute Resolution/Notice of Hearing filed by the tenant was personally served on the landlord on October 17, 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 tenants are entitled to an order cancelling the 10 day Notice to End Tenancy dated October 5, 2014.
- b. Whether the tenants are entitled to an order for emergency repairs or for repairs?
- 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 retain all or a portion of the security deposit/pet deposit?
- f. 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 June 12, 2014. The rent is \$900 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$450 at the start of the tenancy. The tenants have also paid a pet damage deposit of \$450.

The landlord testified the tenants failed to pay the rent for October and the sum of \$540 remains outstanding. Also the tenants have not paid the rent for November and the sum of \$900 remains outstanding. The total amount outstanding for rent is \$1440.

The tenant testified that she paid the rent of for November in the sum of \$900 and arrears of rent for October. She acknowledged that she owed rent for October totaling \$200. She testified she paid the rent to the landlord's father who told her he would not give a receipt until all of the arrears were paid.

The landlord's father was subsequently called in response to the tenant's testimony. He testified the tenant did not pay the rent for November and that the sum of \$540 is still owed for October. He also testified that as a landlord he always gives a receipt when the tenant pays cash even where money is still owed. A review of the receipts submitted into evidence confirms this.

The tenant testified that she was initially set to move out at the end of November. However, due to renovations in her new rental unit that would not be ready for occupancy until the end of December. .

Analysis

In *Faryna v. Chorny*, [1952] 2 D.L.R. 354, the B.C. Court of Appeal set out the following test for assessing credibility:

“The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carries conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing

conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. (page 357)”

After considering the disputed evidence of the parties I determined that I prefer the evidence of the landlord to that of the tenant. I determined that the tenant’s testimony is not credible for the following reasons:

- The tenant failed to provide documentary evidence of any sort (bank statements, cheque stubs to support her allegation that she paid the November rent and all of the arrears less \$200 for October.
- The tenant failed to provide evidence from witnesses that could confirm the payment.
- The landlord has kept proper records of payments made and provided receipts for such payments.
- The tenants’ alleged conduct of making a cash payment without receiving a receipt is not reasonable in a situation such as this.
- The tenant testified the landlord refused to give a receipt because there was still money owing. This is inconsistent with the previous receipts given by the landlord where the landlord made a notation of the receipt that a certain amount was still owed.
- The landlord’s testimony was credible and consistent with past practices as evidenced by his receipts.
- The landlord maintained an accounting.
- The tenant testified that she and her roommate found another rental unit that was supposed to be ready for occupancy on the first of December but because of renovations it will not be ready for occupancy until the end of December.

Tenant’s Application:

For the reasons set out above I determined that the tenants owe rent. I determined the tenants owe rent in the sum of \$1440 for October and November. I determined the 10 day Notice to End Tenancy is valid. As a result I dismissed the tenant’s application to cancel the Notice.

The tenant acknowledged she owes \$200. The landlord would be entitled to an Order for Possession based on the tenant’s testimony as she acknowledged she owes rent. As the

tenancy is coming to an end I dismissed the tenants' application for repairs and emergency repairs.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenants' 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 the month(s) of October and November and the sum of \$1440 remains outstanding. I determined the landlord has given sufficient notice of their intention to claim for all of last month as provided in the Application for Dispute Resolution. **I granted the landlord a monetary order in the sum of \$1440 plus the sum of \$50 in respect of the filing fee for a total of \$1490.**

Security Deposit

Section 72(2) of the Residential Tenancy Act provides as follows:

Director's orders: fees and monetary orders

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

I determined the security deposit amounts to \$450 and the pet damage deposit amounts to \$450 for a total of \$900. I ordered the landlord may retain these sums thus reducing the amount outstanding under this monetary order to the sum of \$590.

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: November 25, 2014

Residential Tenancy Branch

