



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 three representatives of the landlord and in the absence of the tenants although duly served. 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 and the one month Notice to End Tenancy was personally served on the Tenants on September 10, 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 October 11, 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 one month Notice to End Tenancy dated September 10, 2014?
- b. Whether the landlord is entitled to an Order for Possession?
- c. Whether the landlord is entitled to A Monetary Order and if so how much?
- d. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?

- e. 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 April 6, 2014 and end on April 15, 2015. The rent is \$580 per month payable on the first day of each month. The tenant paid a security deposit of \$290 at the start of the tenancy.

The landlord provided evidence that the tenants failed to pay the rent for the period of September 6, 2014 to October 5, 2014. However on reviewing the evidence presented by the landlord during the process of writing the decision it appears the oral testimony of the landlord was mistaken and that the rent for that period was paid. The landlord wrote a receipt for “use and occupation only” for the rent payment that was made in the form of a bank deposit on September 17, 2014 for the rent that was due on September 6, 2014. The Application for Dispute Resolution does not make a claim for that period. In the circumstances I determined it was appropriate to dismiss the landlord’s claim for rent for the period of September 6, 2014 to October 5, 2014 with liberty to re-apply if the payment.

I determined the landlord has established a claim for non-payment of rent for the period October 6, 2014 to November 5, 2015 (\$580 is owed) and the period November 6, 2014 to November 21, 2014 (\$290 is owed) and the sum of \$870 remains owing. The tenant(s) have remained in the rental unit.

Tenants’ Application:

The tenants failed to attend the hearing. As a result I dismissed the tenants’ application without liberty to re-apply. The tenants did not apply to cancel the 10 day Notice to End Tenancy.

Landlord’s Application:

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. The payment of the rent in September occurred on September 17, 2014 which occurred after the 5 day period that would void the Notice to End Tenancy. 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 period October 6, 2014 to November 5, 2015 (\$580 is owed) and the period November 6, 2014 to November 21, 2014 (\$290 is owed) and the sum of \$870 remains owing. I determined it was appropriate to give the landlord half of a month rent for November as it is unlikely the landlord would be able to enforce the Order for Possession and re-rent the rental unit before that time. **I granted the landlord a monetary order in the sum of \$870 plus the sum of \$50 in respect of the filing fee for a total of \$920.**

Security Deposit

I determined the security deposit plus interest totals the sum of \$290. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$630.

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 07, 2014

Residential Tenancy Branch

