



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 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 November 8, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenants as the Tenants have acknowledged service of the documents on December 1, 2014.

The respondent DS appeared and testified his real name was DK. With his consent I ordered the Application for Dispute Resolution to be amended to identify the respondents as JW and DS also known as DK. 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 tenant testified the tenancy began September 1, 2014. The rent is \$700 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$350 at the start of the tenancy.

The landlord testified the tenants failed to pay the rent when due on November 1, 2014. The 10 day Notice to End Tenancy was personally served on the Tenants on November 8, 2014. The landlord testified the cheque from the Ministry for JW was given to them at the end of November and she issued a receipt in the sum of \$350 "for use and occupation only." The landlord testified the tenants owe \$350 for November and \$700 for December.

The tenant produced a copy of a receipt from the Ministry that indicates \$375 was paid by way of cheque to the landlord for November's rent. He further testified he paid cash of \$350. He acknowledged that he has not paid the rent for December. Unfortunately the tenant failed to provide the Residential Tenancy Branch with this evidence within the 7 days set out in the Rules of Procedure and has not given the landlord a copy of the document.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. Even if the tenant's evidence is accepted the tenants failed to pay the rent within the 5 days of receiving the Notice to End Tenancy that would void the Notice. The subsequent payment was accepted by the landlord for "use and occupation only" and thus did not reinstate the tenancy. The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. 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 two days Notice.

The tenants 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

There is a dispute as to how much rent was paid for November. The tenant testified \$375 was paid by way of Ministry cheque and he paid a further \$350 in cash. The landlord testified she received the Ministry's cheque for JW only and DS did not make the cash payment. However, the receipt given by the landlord is for \$350. The Ministry documentation indicates that the cheque was for \$375. The landlord testified she may have made a mistake in the amount put on the receipt.

In the circumstances given the confusion in the amount of the receipt I determined the landlord failed to prove there is rent owed for November. I am prepared to accept the tenants paid \$375 plus \$350 for a total of \$725. However, the tenants admitted they have not paid the rent for December. I determined the sum of \$675 is owed for December. **I granted the landlord a monetary order in the sum of \$675 plus the sum of \$50 in respect of the filing fee for a total of \$725.**

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: December 12, 2014

Residential Tenancy Branch

