



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.

Neither party produced a copy of the 10 day Notice to End Tenancy. However, the tenant has filed an application to cancel the 10 day Notice. The tenant acknowledged receiving it. I find that the 10 day Notice to End Tenancy was sufficiently serve on the tenant on November 21, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other. 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?
- 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 tenancy agreement that provided that the tenancy would start on October 1, 2013. The present rent is \$1100 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$550 at the start of the tenancy.

Analysis:

The landlord testified the tenants have failed to pay the rent for the months of October, November and December and the sum of \$3300 remains outstanding.

The tenant testified he paid the rent for October in cash on November 13, 2014. He further testified that he paid the rent for November in cash on November 29, 2014. The tenant acknowledges he has not paid the rent for December. The tenant testified the landlord refuses to give receipts.

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 I determined the testimony of the tenant is not credible for the following reasons:

- The tenant’s testimony is not consistent with other documentary evidence. He testified he paid the rent for October on November 13, 2014. However, there is a number of text messages between tenant and the landlord in which the landlord is demanding payment of the rent for October and November and the tenant is stating that he has been unable to pay because he is working late and not able to get to the bank.
- The tenant does not state during these text messages that he has paid the rent for October as he testified.

- The tenant's evidence is internally inconsistent. At one stage in his testimony he states he paid the rent for November by cash on November 29, 2014. At another stage he testified he paid it in cash on November 26, 2014.
- The tenant's testimony of paying rent in cash without getting a receipt is not consistent with a tenant who has received a 10 day Notice to End Tenancy and who is in the middle of a dispute with the landlord.
- The Application for Dispute Resolution filed by the tenants and dated November 26, 2014 alleges "our rent has been paid and is up to date..." This allegation is not correct based on the tenant's testimony that he paid the rent in cash for November on November 29, 2014.

As a result I determined the tenants have failed to pay the rent for October, November and December and the sum of \$3300 is owed. The tenants continue to live in the rental unit.

Tenant's Application:

I dismissed the tenants' application for an Order to cancel the 10 day Notice to End Tenancy. For the reasons set out above I determined rent was owing and there is no basis to cancel the 10 day Notice to End Tenancy.

Landlord's Application - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant's application to cancel the 10 day 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. I set the effective date of the Order for Possession for December 31, 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.

Analysis - Monetary Order and Cost of Filing fee

I determined the tenant has failed to pay the rent for the month(s) of October, November and December 2014 and the sum of \$3300 remains outstanding. I dismissed the claim

for \$200 for a pet damage deposit as such an order is not appropriate where the tenancy is coming to an end. I granted the landlord a monetary order in the sum of \$3300 plus the sum of \$50 in respect of the filing fee for a total of \$3350.

Security Deposit

I determined the security deposit plus interest totals the sum of \$550. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$2800.

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 22, 2014

Residential Tenancy Branch

