



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 Tenant on November 5, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenant by mailing, by registered mail to where the tenant resides on November 27, 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 retain all or a portion of the security deposit/pet deposit?
- d. 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 September 1, 2014. The rent is \$760 per month (which includes \$15 for laundry) payable in advance on the first day of each month. The tenant paid a security deposit of \$372.50 at the start of the tenancy.

The tenant(s) failed to pay the rent for November when due. The landlord served a 10 day Notice to End Tenancy on the tenant on November 5, 2014. The rent for November was subsequently paid on November 28, 2014. The landlord accepted the payment for “use and occupation only.” The rent for December has not been paid.

The tenant testified that she was involuntarily hospitalized on November 7, 2014 and she has been unable to get out to pay the rent. She further testified that she withheld the rent because the landlord failed to make necessary repairs. 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.

The representative of the landlord testified they have talked to the tenant’s family who indicated they would move out the tenant but she refuses to allow them to do this.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. Where a tenant is served a 10 day Notice the tenant can void the Notice to End Tenancy by paying all of the arrears within 5 days. If the tenant pays the arrears after that time the landlord can accept the payment and reinstate the tenancy or can accept the payment for “use and occupation only” in which case the tenant must leave at the end of the rental payment

period. The landlord accepted the payment for “use and occupation only” and did not reinstate the tenancy.

The rent for December remains outstanding. The Tenant has 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. The landlord stated she was content for the Order for Possession to be set for the end of December. **Accordingly, I granted the landlord an Order for Possession effective 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 December and the sum of \$760 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 \$760 plus the sum of \$50 in respect of the filing fee for a total of \$810.**

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 18, 2014

Residential Tenancy Branch

