



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.

Preliminary Matter:

The tenant requested an adjournment. The tenant testified he needed time to obtain the assistance of an Advocate or a Mental Health worker. The landlord opposed the adjournment. After hearing the submissions of the parties I determined that an adjournment was not appropriate. The tenant has not filed an Application for Dispute Resolution seeking an order cancelling the Notice to End Tenancy. The Residential Tenancy Act provides that where the tenant has not filed an application to dispute the Notice within 5 days of receiving the Notice he is deemed to have accepted the end of tenancy and he must vacate the rental unit. Secondly, I determined the tenant had approximately 4 weeks from receiving the Application and there is sufficient time to obtain assistance. The tenant failed to give an adequate explanation as to what efforts he has made and why he has been delayed. Thirdly, I determined the prejudice to the landlord outweighs any adjournment. There is over 3 months of outstanding rent and it does not appear likely that the tenant will be able to pay the arrears. As a result I denied the application for an adjournment.

Both parties were given a full opportunity to present evidence and make submissions. 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 December 5, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was

personally served on the tenant on December 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 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 written tenancy agreement that provided that the tenancy would start on May 30, 2009. The present rent is \$815 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$400 at the start of the tenancy.

The tenant(s) failed to pay the rent for the months of November, December and January and the sum of \$2430 remains owing. The tenant(s) continues to live in the rental unit.

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. 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 January 31, 2015..

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 November, December and January 2015 and the sum of \$2430 remains outstanding. I granted the landlord a monetary order in the sum of \$2430 plus the sum of \$50 in respect of the filing fee for a total of \$2480.

Security Deposit

I determined the security deposit plus interest totals the sum of \$400. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$2080.

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: January 15, 2015

Residential Tenancy Branch

