



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 the applicant and in the absence of the respondent 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.

I find that the 10 day Notice to End Tenancy was sufficiently served on the Tenant by posting on December 3, 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 January 14, 2015. I find that the Amended Application for Dispute Resolution/Notice of Hearing was sufficiently served on the tenant by mailing by registered mail to where the tenant resides on January 19, 2015. 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 one year fixed term written tenancy agreement that provided that the tenancy would start on October 1, 2014 and end on October 1, 2015. The rent

is \$2600 per month payable on the first day of each month. The tenant paid a security deposit of \$1300 with the last payment on October 16, 2014.

The tenant failed to pay the rent for December when due. The landlord served a 10 day Notice to End Tenancy on the tenant on December 3, 2014. The tenant paid the rent for December on December 15, 2014. The landlord accepted the payment for “use and occupation only” and did not reinstate the tenancy.

The tenant(s) failed to pay the rent for the months of January 2015 (\$1500 remains outstanding) and February 2015 (\$2600 remains outstanding) and the sum of \$4100 remains owing. The tenant(s) have remained 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. **At the request of the landlord I set the effective date of the Order for Possession for February 28, 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 January 2015 (\$1500 remains outstanding) and February 2015 (\$2600 remains outstanding) and the sum of \$4100 remains owing. 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 \$4100 plus the**

sum of \$100 in respect of the filing fee for a total of \$4200. I determined the landlord was entitled to \$100 for the cost of the filing fee as this was the amount that was paid as the tenant owed over \$5000 at the time the Amended Application for Dispute Resolution was filed.

Security Deposit

I dismissed the claim to retain the security deposit with liberty to re-apply as the landlord requested that he be permitted to withdraw this claim.

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: February 03, 2015

Residential Tenancy Branch

