



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MR, 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 sufficiently served on the Tenants by posting on January 12, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other by mailing, by registered mail.

Preliminary Matter:

The agent for the landlord applied to amend the within application to include a claim for loss of revenue for February 2015.

Rule 2.11 provides as follows:

2.11 Amending an application before the dispute resolution hearing

The applicant may amend the application without consent if the dispute resolution hearing has not yet commenced.

If applications have not been served on any respondents, the applicant must submit an amended copy to the Residential Tenancy Branch and serve the amended application on each respondent as soon as possible.

If the application has been served, a copy of the amended application must be served on each respondent so that they receive it at least 14 days before the scheduled date for dispute resolution hearing.

An amended application must be clearly identified, and be provided separately from all other documents. All evidence to support an amended application must be served on the other party and submitted to the Residential Tenancy Branch at Residential Tenancy Branch Rules of Procedure the same time as the amended application is served and submitted. (See Rule 3 – *Serving the Application and Submitting and Exchanging Evidence*).

I denied the landlord's request to amend the Application for Dispute Resolution to include a claim for loss of revenue for February for the following reasons:

- The claim is premature. The tenants have vacated the rental unit and it is possible the landlord will re-rent the rental unit and therefore not suffer a loss.
- The tenants would be significantly prejudiced in that they would not have an opportunity to prepare for this claim.
- The tenants would be prejudiced in that even if the landlord was not able to re-rent the rental unit they have a right to question the extent to which the landlord has properly mitigate her loss.

As I have denied the request to amend the Application for Dispute Resolution the landlord retains the right to make a claim for loss of revenue in the future.

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 dated January 10, 2015?
- 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 6 month fixed term written tenancy agreement that provided that the tenancy would start on March 1, 2013 and end 6 months later and thereafter become month to month. The rent is \$2100 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$1050 at the start of the tenancy.

The tenant(s) acknowledge they have failed to pay the rent for January and the sum of \$2100 remains owing. The tenants testified they paid the rent in cash for December to an employee who works for the representative of the landlord in the later part of December. The employee did not give them a receipt. The representative of the landlord did not testify at the hearing and has allegedly moved to Toronto. The agent for the landlord who filed the within Application testified that her instructions are that the rent for December was not paid.

The tenant(s) testified they vacated the rental unit on January 25, 2015.

Tenants' Application:

I determined there is no basis for an order to cancel the 10 day Notice to End Tenancy. The tenants admitted they have not paid the rent for January. The tenants have vacated the rental unit. As a result I ordered that the tenants' application to cancel the 10 day Notice to End Tenancy be dismissed.

Landlord's Application - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenants' application for an order to set aside the 10 day Notice to End

Tenancy has been dismissed. Accordingly, I granted the landlord an Order for Possession on 2 days notice.

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 tenants have failed to pay the rent for January and the sum of \$2100 remains outstanding.

I dismissed the claim for non-payment of rent for December with liberty to re-apply. The agent for the landlord testified the rent for December remain unpaid. However, she does not have first hand knowledge of the accounts of the landlord. The representative of the landlord responsible for this did not attend the hearing and did not provide evidence. The tenants testified they paid the rent for December to an employee of the landlord in late December and did not receive a receipt. In the circumstances given the lack of proper evidence I determined it was appropriate to dismiss this claim in this hearing with liberty to re-apply if the rent was not paid.

I granted the landlord a monetary order in the sum of \$2100 plus the sum of \$50 in respect of the filing fee for a total of \$2150.

Security Deposit

I determined the security deposit plus interest totals the sum of \$1050. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$1100.

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 10, 2015

Residential Tenancy Branch

