



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, OPL, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38
4. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given full opportunity to present all relevant evidence and testimony in respect to their claims and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

It must be noted that the tenant testified they vacated the rental unit September 27, 2015 at 5:00 p.m. – the day before this hearing. The landlord testified they have not been able to corroborate the tenant's claim and therefore continue to seek an Order of Possession. The tenant does not dispute the landlord's application for such an Order and effectively agrees with their request.

In this tenancy rent in the amount of \$950.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from

the tenant in the amount of \$500.00 which they retain in trust. The tenant was given a 2 Month Notice to End for Landlord's Use on June 26, 2015 with an effective date of August 31, 2015, which the tenant did not dispute. In addition, the tenant was given a 10 Day Notice to End for Unpaid Rent on July 03, 2015. The parties ultimately agreed that the rent for July 2015 was subsequently satisfied and that August 2015 rent was not paid by the tenant given the parties' acknowledgement of the tenant's entitlement to an amount equivalent to that portion of rent under Section 51(1) of the Act for receiving the 2 Month Notice. However, the parties also agree the tenant then continued to occupy the rental unit beyond the end date of the tenancy into the majority of September 2015 and the landlord therefore claims the equivalent of the rent for the month of September 2015 for the tenant's overholding of the unit.

Analysis

Based on the evidence from both parties I find that the tenant was served with a 2 Month Notice to End Tenancy for landlord's Use. The tenant did not dispute that Notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice of August 31, 2015. Irrespective of the foregoing, the tenant claims they have now vacated and are not opposed to the landlord receiving an Order of Possession. Effectively, the above facts above amount to the landlord's entitlement to an **Order of Possession**.

I also find that the landlord has established a monetary claim for loss of revenue representing the tenant's overholding of the unit for September 2015 in the amount equivalent of one month's the rent for September 2015. The landlord is also entitled to recovery of the filing fee. The security deposit held by the landlord will be off-set from the award made herein.

Calculation for Monetary Order

Overholding for September 2015 – 1 month's rent	\$950.00
Filing Fee for the cost of this application	50.00
Less Security Deposit held by landlord	-500.00
Total Monetary Award	\$500.00

Conclusion

I grant an Order of Possession to the landlord effective 2 days from the day it is served on the tenant. The tenant must be served with this **Order of Possession**. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I Order that the landlord retain the security deposit of \$500.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$500.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: September 28, 2015

Residential Tenancy Branch

