



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF, 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 Tenant on August 18, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other. was personally served on February , 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 tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated August 18, 2015?
- b. Whether the tenant is entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to an Order for Possession?
- d. Whether the landlord is entitled to A Monetary Order and if so how much?
- e. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- f. 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 October 1, 2014, end on March 30, 2015 and become month to month after that. The rent is \$1300 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$650 at the start of the tenancy.

The landlord was not able to pay his mortgage and the Mortgagee commenced a foreclosure proceeding. An order for conduct of sale was made by the Supreme Court of British Columbia on May 26, 2015 granting the Mortgage company conduct of the sale.

On August 10, 2015 the tenant got written notice and a Notice of Appointment of Collector of Rents from the solicitor for the Mortgage Company that was granted conduct of sale that all rent cheques were to be made to VP Ltd. in Calgary.

The tenant testified that he has paid all of the rents claimed by the landlord for the months of June, July, August, September and October which totals \$6500 to VP Ltd. in Calgary. The tenant failed to present proof of the payments. The landlord testified he was content with the payments being made to the bank but need proof the payments had been made. The tenant represented he will e-mail copies of the payment(s) to the landlord by October 23, 2015.

Analysis:

It is unfortunate the tenant did not provide the proof of the payments for this hearing. However, in the situation I determined it was appropriate to accept the testimony of the tenant and determine the payments have been made.

Tenant's Application:

As a result I ordered that the 10 day Notice to End Tenancy dated August 18, 2015 be cancelled. I dismissed the tenant's claim for the cost of the filing fee as this application would not have been necessary if the tenant provided the landlord with proof of payment as soon as it was made.

Landlord's Application:

I dismissed the Landlord's application for an Order for Possession and a monetary order as I determined the rent payments have been made as directed by the Mortgage Company's lawyer. If the tenant has failed to make the payments I order that the landlord have the right to re-apply subject to the rights and obligations he has with his bank.

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: October 15, 2015

Residential Tenancy Branch

