



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MDSD & FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the 10 day Notice to End Tenancy dated November 2, 2015

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$780 for unpaid rent
- c. An order to retain the security deposit
- d. An order to recover the cost of the filing fee

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. The parties acknowledged they had received the documents of the other party.

I find that the 10 Notice to End Tenancy was served on the Tenant by posting on November 2, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was personally served on the tenant on November 13, 2015. I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on November 16, 2015.

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 November 2, 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 written tenancy agreement that provided that the tenancy would start on September 1, 2015. The rent is \$425 per month payable on the first day of each month. The tenant did not pay a security deposit.

The tenant testified that when he signed the tenancy agreement he noticed there were a number of cats in the rental property. He has a 12 year old dog and thought there was no problem with the dog living with him in the rental unit.

At the end of October the landlord became aware of the presence of the dog and told the tenant that he was going to be evicted because of the dog. The landlord testified the policy for the building is that dogs are not permitted. Cats are allowed. The rental agreement provides that the tenant must not keep a pet unless specifically permitted by the landlord. The tenant testified the landlord failed to give him a copy of the tenancy agreement.

The tenant had previously paid \$120 of the rent for November. He testified he went to see the landlord on November 2, 2015 after receiving the 10 day Notice to End Tenancy to discuss the dog issue and to pay the balance of the rent.. He further testified the landlord told him that he could pay balance of the rent for November but that he was still going to be evicted because of the dog.

The landlord testified that had the tenant paid the rent he would have served a one month Notice to End Tenancy on the tenant.

The tenant testified that he was not going to pay the rent if he was going to be evicted in any event. The tenant did not pay the balance of the rent for November. He failed to pay the rent for December. The landlord testified the tenant's rental unit has been re-rented to another party who is presently being housed in a more expensive apartment.

Tenant's Application to Cancel the 10 day Notice to End Tenancy:

Section 26(1) of the Residential Tenancy Act provides as follows:

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the

tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 46(4) of the Residential Tenancy Act provides as follows:

Landlord's notice: non-payment of rent

46(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

The law provides that that tenant must pay the rent even where the tenant takes the position that the landlord has failed to do something the landlord was obligated to do under the Act. The law further provides that if the tenant pays the arrears of rent within 5 days after receiving the Notice the Notice is void. It was open to the tenant to pay the arrears of rent on November 2, 2015 and thus void the 10 day Notice to End Tenancy. The landlord would have been forced to serve a one month Notice to End Tenancy on the tenant and the tenant would then have the legal right to dispute it. The landlord may or may not have had grounds to end the tenancy on the breach of a material term of the tenancy agreement. However, that issue is not before me. The tenant testified he decided not to pay the rent because the landlord was going to evict him in any event. In this situation it cannot be said that the tenant tendered the balance of the rent owing. I determined the 10 day Notice to End Tenancy is a valid Notice. Further, the tenant failed to establish legal grounds to withhold the payment of the balance of the rent.

As a result I ordered that the tenant's application to cancel the 10 day Notice to End Tenancy be dismissed without liberty to re-apply.

Landlord's Application - Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant's application to set aside the Notice to End Tenancy has been dismissed. 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 December 15, 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 (\$305 is owed) and (December \$212.50 is owed to December 15, 2015) and the sum of \$517.50 remains outstanding. I dismissed the landlord's claim for non payment of rent for the period December 16, 2015 to December 31, 2015 as the landlord testified he has another tenant ready to move in and it appears the landlord will not suffer a loss for this rent unit. I ordered that the tenant pay to the landlord the sum of \$517.50 plus \$50 for the cost of the filing fee for a total of \$567.50.

Security Deposit:

I dismissed the claim to keep the security deposit as no security deposit was paid.

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.

Conclusion

In summary, the tenant's application to cancel the 10 day Notice to End Tenancy is dismissed. I granted the landlord an Order for Possession effective December 15, 2015. I ordered that the tenant pay to the landlord the sum of \$567.50.

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: December 07, 2015

Residential Tenancy Branch

