



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

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 \$1794 for unpaid rent
- c. An order to recover the cost of the filing fee

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 personally served on the Tenant on November 12, 2015. A 2 month Notice to End Tenancy was also served on the Tenant at that time. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on December 3, 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 recover the cost of the filing fee?

Background and Evidence

The parties entered into tenancy agreement between 12 and 15 years ago. The present rent is \$550 per month payable on the first day of each month. The tenant has not paid a security deposit. The tenant(s) failed to pay the rent when due. The rent for November and December was subsequently paid and was accepted by the landlords for "use and occupation only."

The tenant continues to live in the rental unit. .

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There was outstanding rent. The Tenant has 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. The arrears were subsequently paid after the 5 days that would void the Notice. The landlord accepted the payment "for use and occupation only." The tenant has not paid the rent for January 2016. However, the tenant is entitled to apply the rent for January as she is entitled to the equivalent of one month rent as the landlord served a 2 month Notice to End Tenancy on the Tenant. Accordingly, I granted the landlord an Order for Possession effective January 31, 2016.

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 dismissed the claim for non-payment of rent. While the rent for January has not been paid the tenant is entitled to live rent free for one month as the landlord served a 2 month Notice to End Tenancy on the Tenant and she is entitled to the equivalent of one month rent. The landlord is entitled to the cost of the filing fee in the sum of \$50. I granted the landlord a monetary order in the sum of \$50 for the cost of the filing fee.

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: January 26, 2016

Residential Tenancy Branch

