



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF, CNR

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 for unpaid rent
- c. An order to retain the security deposit
- d. An order to recover the cost of the filing fee

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

- a. An order to cancel the 10 day Notice to End Tenancy dated December 16, 2015?
- b. A monetary order in the sum of \$895.25 for emergency repairs.
- c. An order that the tenant 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.

There is a dispute between the parties relating to the exchange of evidence and documents. The tenant testified he attempted to serve the landlord a copy of his Application for Dispute Resolution by mailing it by registered mail to the address on the Notice to End Tenancy but it was returned. The landlord disputes this. The tenant testified the landlord failed to provide him with the documents. The landlord produced a receipt from Canada Post indicated the documents had been sent by registered mail and the tenant failed to pick them up. The Act allows for service by registered mail. I determined there was sufficient service even though the tenant failed to pick up the documents.

I find that the 10 day Notice to End Tenancy was personally served on the Tenant on December 16, 2015. Further I find that the Application for Dispute Resolution/Notice of filed by the Tenant was sufficiently served on the landlord. I find that the Application for Dispute Resolution filed by the landlord was sufficiently served on the Tenant by mailing, by registered mail to where the tenant resides on December 31, 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 December 16, 2015
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. Whether the tenant is entitled to recover the cost of the filing fee?
- d. Whether the landlord is entitled to an Order for Possession?
- e. Whether the landlord is entitled to A Monetary Order and if so how much?
- f. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- g. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into an oral tenancy agreement that provided that the tenancy would start on November 1, 2014. The rent is \$2650 per month with \$1325 payable on the first day of each month and \$1325 payable on the 15th day of each month. The tenant paid a security deposit of \$1325 at the start of the tenancy.

The landlord testified the tenant failed to pay half of rent for July 2015 and has failed to pay the rent for December 2016 and January 2016. The tenant testified he paid the rent for July 2015 in cash at the end of November. He acknowledged he has not paid the rent for December and January. However, he testified he gave the landlord a text message stating that he was ending the tenancy on January 15, 2016. The tenant failed to produce a copy of the text message. The tenant testified he vacated the rental unit at the end of December. However, he sublet two rental units in the basement and those two tenants remain in the rental unit.

Tenant's Application:

The tenant has vacated the rental unit and he has no interest in reinstating the tenancy. As a result I dismissed his application to cancel the 10 day Notice to End Tenancy.

The tenant testified he intends to file another application for the cost of the emergency repairs. I determined it was appropriate to sever the tenant's claim for a monetary order for the cost of emergency repairs as the tenant has added to his claims and it is appropriate that all claims for the cost of emergency repairs be heard at the same time. The tenant has liberty to make a new application for the cost of emergency repairs. The tenant has not been successful. I dismissed his claim for the cost of the filing fee.

Landlord's Application - 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 10 day Notice to End Tenancy has been dismissed. The Act provides where a tenant's application to cancel the Notice to End Tenancy has been dismissed the arbitrator shall issue an Order for Possession. Accordingly, I granted the landlord an Order for Possession on 2 days Notice.

The tenant and his sub-tenants must be served with this Order as soon as possible. Should the tenant and his sub-tenants 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:

With respect to each of the landlord's claims I find as follows:

- a. The tenant acknowledged that he owed the rent for the period of December 2015 to January 15, 2016. The tenant gave a Notice to End Tenancy setting the end of tenancy for January 15, 2016. However, that Notice was given by text message. The message did not meet the requirements of section 52 of the Act to be a valid Notice. Further, the tenant's sub-tenants failed to vacate the rental unit. I determined the landlord is entitled to \$2650 for December 2015 and \$2650 for January 2016.
- b. The Application for Dispute Resolution filed by the landlord claimed half of the rent for February 2015. At the hearing the landlord testified that was paid but he testified the tenant failed to pay half of the rent for July. I dismissed the landlord's claim for half of February rent as the landlord acknowledged it was paid. I determined it was not appropriate to consider the landlord's claim for half of the rent for July as it was not included in the landlord's application and the landlord did not amend his application. The landlord retains the right to file a new Application for Dispute Resolution for half of the rent for July as I have not determined that issue on the merits.

In summary I determined the landlord has established a claim against the tenant in the sum of \$5300 plus \$50 for the cost of the filing fee for a total of \$5350.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$1325. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$4025.

Conclusion:

I dismissed the tenant's application for an order to cancel the 10 day Notice to End Tenancy without leave to re-apply. I severed the tenant's monetary claim. The tenant has liberty to file a new application for a monetary order for the cost of emergency repairs. I granted an Order for Possession on 2 days notice. I ordered that the landlord shall retain the security deposit of \$1325. In addition I ordered that the tenant paid to the landlord the sum of \$4025. The landlord retains the right to file a new application for non-payment of half of the rent for July 2015.

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 28, 2016

Residential Tenancy Branch

