



Dispute Resolution Services

Page: 1

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 landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$1600 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 day Notice to End Tenancy was personally served on the Tenant on December 7, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenant on December 30, 2015 as the Tenant has acknowledged receipt of the documents. 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 retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

Neither party produced a written tenancy agreement. I find that the parties entered into an oral tenancy agreement that provided that the tenancy would start on December 1, 2015. The tenant paid a security deposit of \$335. It is unclear what the agreed rent was. The landlord testified it was originally set at \$650 per month plus ½ of the utilities. However, shortly after the tenant moved in a roommate joined her. The landlord then stated the rent was \$750 per month. However, the landlord failed to reserve the right to increase the rent if a roommate joined the tenant.

I find that the rent was \$650 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$335.

The tenant failed to pay the rent for December when due on December 1, 2015. The landlord personally served the 10 day notice on December 7, 2015. The tenant testified she paid the rent for December but she was unclear as to when the payment was made. The landlord testified the tenant and her roommate made the following payments: \$250 of December 21, 2015, \$150 on December 22, 2015 and \$150 of December 29, 2015. The tenant then changed her testimony saying she paid rent within the 5 day period. The landlord's testimony as to when the rent was paid is preferred to that of the tenant. I find there is \$100 owing for December.

The rent for January and February 2016 has not been paid. The tenant testified she attempted to pay it and the landlord refused to accept payment. The landlord testified she wants to end the tenancy.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. The Residential Tenancy Act provides that where a 10 day Notice is served on the Tenant the tenant must either pay the arrears within 5 days in which case the Notice is void or file an Application for Dispute Resolution to dispute the Notice. The tenant failed to pay the arrears within the 5 days to void the Notice. I find there is \$100 owing in rent for December 2015. Further, the Tenant(s) 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. Accordingly, I granted the landlord an Order for Possession. I set the effective date of the Order for Possession for 2 days after service on the Tenant.

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 December 2015 (\$100 is owed), January 2016 (\$650 is owed) and February (\$650 is owed) and the sum of \$1400 remains outstanding. I determined the landlord has given sufficient notice of their intention to claim for all of last month as provided in the Application for Dispute Resolution. I granted the landlord a monetary order in the sum of \$1400 plus the sum of \$50 in respect of the filing fee for a total of \$1450.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$335. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$1115.

Conclusion:

I granted the landlord an Order for Possession on 2 days notice to the Tenant. I ordered that the landlord shall retain the security deposit of \$335. I further ordered that the Tenant pay to the Landlord the sum of \$1115.

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: February 12, 2016

Residential Tenancy Branch

