



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF, LRE, MT, OL, RP, 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 \$6300 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 January 21, 2016.
- b. An order to suspend or set conditions on the landlord's right to enter the rental unit.
- c. An order for more time to file the within Application
- d. An order that the landlord makes repairs
- e. An order that the landlord comply with the Act, regulation and/or the tenancy agreement
- f. 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.

Part way through the hearing the tenant's connection to the telephone conference call was cut off. I waited approximately 10 minutes but the tenant failed to re-connect. I then proceeded with the hearing in the absence of the tenant. The tenant alleged that she has paid all of the rent except the rent for March to the landlord's son. The landlord's son was called and participated in the telephone conference call. He testified the tenant has not paid rent to him since the service of the 10 day Notice to End Tenancy on January 21, 2016. .

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify.

I find that the 10 day Notice to End Tenancy was served on the Tenant by posting on January 21, 2016. The 10 day Notice to End Tenancy identified VE as the agent for the landlord and that the landlord's address of service was their address. The tenant testified she served the landlord with a copy of the Tenant's Application for Dispute Resolution by mailing, by ordinary mail. The agent for the landlord testified she has not received the Tenant's documents.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was served on the Tenant by mailing, by registered mail to where the tenant resides on February 7, 2016.

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 January 21, 2016?
- b. Whether the tenant is entitled to an order that the landlord comply with the Act, regulation and/or the tenancy agreement?
- 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 a written tenancy agreement that provided that the tenancy would start on October 1, 2015. The rent is \$2100 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$1100 at the start of the tenancy. The tenant paid the first and last month rent when she moved in in November.

Tenant's Application:

The tenant testified that she paid the first and last month rent when she moved in. She also testified that she has paid the rent for January 2016 and February 2016. She acknowledges the rent for March has not been paid. She testified she has receipts for these payments although she failed to produce any receipts to the Branch or to the landlord's agent.

The landlord lives out of town. Her son is handling her affairs with respect to this matter. He testified the last month rent was applied to the rent for November 2015. The

rent was paid for December on the last date that would void the Notice. The rent for January, February and March 2016 has not been paid.

After carefully considering the disputed evidence I determined the evidence of the tenant is not credible. The testimony of the landlord's son is preferred as it was candid, credible and clear. He acknowledged the last month rent had been received but testified it was applied to the rent for November 2015 when the tenant failed to pay the rent. By contrast I found the tenant's testimony evasive and uncertain. At times she said she wasn't certain and could not remember. She failed to provide receipts which she allegedly had in her possession. She testified she paid the rent for January and February in early February. However, her Application for Dispute Resolution which was filed on February 2, 2016 alleges the landlord's son failed to pick up the rent. This is inconsistent with her testimony that she paid the rent for those months. I do not accept the testimony of the Tenant.

I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy. The Notice was served by posting on January 21, 2016. The tenant failed to pay the rent by the date she filed her Application. Based on her statements in her Application she failed to pay the arrears within the 5 days that would void the Notice. Further I find the tenant's testimony that she paid the arrears is not credible. I determined the 10 day Notice to End Tenancy is valid and that the tenant owes the sum of \$6300 in unpaid rent for the months on January, February and March 2016.

Determination and Orders:

As a result I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice. I further order that the application of the tenant for the cost of the filing fee be dismissed.

The tenant failed to produce sufficient evidence to establish her other claims. As the tenancy is coming to an end I order that all other claims brought by the tenant shall be dismissed without leave to re-apply.

Landlord's Application: Order for Possession:

For the reasons set out above I determined the landlord is entitled to an Order for Possession on 2 days Notice.

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.

Landlord's Application - Monetary Order and Cost of Filing fee:

I determined the tenant has failed to pay the rent for the month(s) of January 2016, February 2016 and March 2016 and the sum of \$6300 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 \$6300 plus the sum of \$100 in respect of the filing fee for a total of \$6400.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$1050. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$5350.

In summary I ordered that the Landlord shall retain the security deposit of \$1050. I further ordered that the Tenant pay to the Landlord the sum of \$5350 in satisfaction of this matter.

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: March 16, 2016

Residential Tenancy Branch

