



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, MNR, MNDC, MDSD & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. The tenant was on the line for a short period of time. She stated she did not intend to pay any monetary order and that she would be appealing any decision. She then disconnected the telephone and failed to phone back in. The hearing was concluded 15 minutes after the scheduled start time. 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 Application for Dispute Resolution/Notice of Hearing was served on the Tenant by mailing, by registered mail to where the tenant resides on March 7, 2016. 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

The parties entered into a written tenancy agreement that provided that the tenancy would start on November 1, 1992. The rent at the time the tenancy ended was \$666.52 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$229 on November 1, 1992.

On January 19, 2016 the tenant gave the landlord notice in writing that she was ending the tenancy on February 28, 2016.

The landlord confirmed the Notice to Vacate by letter dated February 17, 2016. In a letter dated February 18, 2016 the landlord informed the Tenant that new tenants had rented the rental unit effective March 15, 2016 after renovations had been made.

The tenant refused to move out at the end of February. She paid the rent for March and it was accepted on a use and occupation basis.

The landlord produced a copy of the tenancy agreement with the new tenants indicating the rent is \$850 per month. He also testified the new tenants have additional expenses in terms of storage of their belongings, additional moving costs etc. However, the landlord has not paid the new tenant these costs as yet.

The tenant continues to reside in the rental unit. However, the landlord testified the tenant is in the process of moving out as of the date and time of the hearing. .

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant(s) gave a notice in writing that she was vacating the rental unit at the end of February. The landlord relied on that Notice and re-rented it to new tenants. 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 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.

Analysis - Monetary Order and Cost of Filing fee

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

- a. I determined the landlord is entitled to use and occupation rent for the period April 1, 2016 to April 7, 2016 in the sum of \$155 as the tenant was still in possession during this time ($\$666 \div 30 \text{ days} \times 7 \text{ days} = \155).
- b. The over-holding has caused the landlord to lose the sum of \$184 in rent which represents the difference between what the new tenants would be obliged to pay per month (\$850) minus what the tenant paid per month (\$666).

- c. I dismissed the balance of the landlord's claim for additional cost caused by the over-holding such as storage fees, additional moving costs incurred by the new tenants as the landlord failed to present proof that it incurred the losses claimed..

I granted the landlord a monetary order in the sum of \$339 plus the sum of \$100 in respect of the filing fee for a total of \$439.

Security Deposit

The tenant paid a security deposit of \$229 on November 1, 1992. I determined the security deposit plus interest totals the sum of \$288.44. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$150.56.

Conclusion:

I granted an Order for Possession on 2 days notice. I ordered that the landlord shall retains the security deposit plus interest in the sum of \$288.44. I further ordered that the Tenant pay to the Landlord the sum of \$150.56.

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: April 07, 2016

Residential Tenancy Branch

