



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD & 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 \$10,488 for unpaid rent, utilities and damages
- 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 Tenants on July 11, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing and the Amended Application for Dispute Resolution was sufficiently served on the Tenants by mailing, by registered mail to where the tenants reside. 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 6 month fixed term written tenancy agreement that provided that the tenancy would start on June 1, 2016 and end on November 30, 2016 and that the tenants would have to vacate the rental unit at that time. The rent is \$2400 per month payable on the first day of each month. The tenant paid a security deposit of \$1200 on May 30, 2016.

The tenant(s) failed to pay the rent for the months of July, August and September and the sum of \$7200 remains owing. The tenant(s) continue to reside in the rental unit.

Analysis - Order of Possession:

The tenant testified the landlord failed to maintain the rental unit and it is in a dangerous condition. Further, the landlord failed to disclose the rental unit was a foreclosure rental unit and has failed to make proper repairs.

Section 261) of the Residential Tenancy Act provides as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I determined the landlord was entitled to an Order for Possession. There is outstanding rent totaling \$7200. The Tenant(s) have 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 tenant made a number of complaints about the failure of the landlord to make repairs and the dangerous condition of the rental unit. The tenants must first obtain the order of an arbitrator to allow them to withhold the payment of rent. Accordingly, I granted the landlord an Order for Possession on 2 days notice..

The tenants 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 monetary claim I find as follows:

- a. I determined the landlord is entitled to \$7200 for non-payment of rent for the months on July, August and September 2016.
- b. I determined the landlord is entitled to \$74.59 for the tenants' share (50%) of the hydro for the period June 1, 2016 to August 5, 2016.
- c. I dismissed the claim for the cost of hydro from August 6, 2016 to the date the tenants vacate with liberty to re-apply. That claim is premature as the landlord does not have the bills.
- d. I dismissed the claim of \$100 per month for the period June to September 2016 with liberty to re-apply as the landlord does not have the bills to support that claim.
- e. I dismissed the claim for loss of rent for October with liberty to re-apply as it is possible the landlord will re-rent the rental unit.

- f. I dismissed the claim of \$250 for an estimate for the cost of cleaning as there is insufficient proof to establish this claim. The landlord has liberty to re-apply.

I granted the landlord a monetary order in the sum of \$7274.59 plus the sum of \$100 in respect of the filing fee for a total of \$7374.59.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$1200. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$6174.59.

Conclusion:

I ordered that the Landlord shall retain the security deposit of \$1200. In addition I further ordered that the Tenant(s) pay to the Landlord(s) the sum of \$6174.59.

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: September 12, 2016

Residential Tenancy Branch