



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 landlord use.
- b. 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 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 tenant asked for an adjournment on the basis that she was caring for her dying father, she was suffering from depression and she needed time to obtain an advocate. After considering all of the evidence I determined this was not an appropriate case to grant an extension of time for the following reasons:

- The tenant had delayed the proceeding by failing to pick her registered mail.
- The tenant failed to provide evidence that she has made reasonable efforts to prepare for this hearing.
- The tenant has failed to file an Application for Dispute Resolution to dispute the Notice to End Tenancy. The Residential Tenancy Act provides that where the tenant has failed to file an application and the time to do so has expired, the tenant is conclusively deemed to have accepted the end of the tenancy and the tenant must vacate the rental unit on the end of tenancy date.

I find that the 2 month Notice to End Tenancy was served on the Tenant by posting on July 24, 2016. Further 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 September 15, 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 recover the cost of the filing fee?

Background and Evidence:

The parties entered into a tenancy agreement that provided that the tenancy would start about 2 ½ years ago. The rent is \$650 per month payable on the first day of each month. The tenant paid a security deposit of \$350 at the start of the tenancy.

The rent for October and November was paid a few days ago.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. The landlord served a 2 month Notice to End Tenancy on the Tenant on July 24, 2016.. 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.

The testified asked the landlord show compassion given that her father is dying and asked that she be permitted to stay in the rental unit until April 30, 2017. The landlord was reluctant but eventually she agreed to end the tenancy on April 30, 2017. **As a result I set the effective date of the Order for Possession for April 30, 2017. As the landlord has been successful with this application I ordered that the Tenant pay to the Landlord the sum of \$100 for the cost of the filing fee such sum may be deducted from the security deposit.**

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.

The tenant subsequently demanded the landlord pay her security deposit back. The landlord then stated she had changed her mind and wanted an earlier Order for Possession. I determined the parties were bound by their agreement ending the tenancy on April 30, 2017.

The tenant demanded the return of the security deposit. I advised the parties that the Act they should contact the Residential Tenancy Branch for advice.

The Residential Tenancy Act provides that the landlord is entitled to hold a maximum security deposit of $\frac{1}{2}$ of the monthly rent. Further, the landlord was entitled to hold this amount until the later of 15 days after the end of tenancy or the date the landlord receives the Tenant's forwarding address in writing unless there is an agreement in writing the landlord can keep the deposit, the landlord has filed an Application for Dispute Resolution to keep the deposit or the landlord already has a monetary order against the tenant. If the landlord fails to claim against the deposit the tenant is entitled to make a claim for double the security deposit.

Conclusion:

I granted an Order for Possession effective April 30, 2017. I ordered that the Tenant pay to the Landlord the sum of \$100 for the cost of the filing fee such sum may be deducted from the security deposit.

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: November 07, 2016

Residential Tenancy Branch