



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 \$ for unpaid rent 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 Notice to End Tenancy was personally served on the Tenant on September 14, 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 October 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 tenancy began approximately 1 ½ years ago. The present landlord took possession on May 31, 2016. The rent is \$1450 per month payable on the first day of each month. The tenant paid a security deposit of \$725 at the start of the tenancy. The tenant(s) failed to pay the rent for the months of June (\$1450 is owed), July (\$1450 is owed), August (\$950 is owed), September (\$1450 is owed), October (\$1450 is owed) and November (\$1400 is owed) and the sum of \$8200 remains owing. The tenant(s) have remained in the rental unit.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. 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.

Further, the tenant testified that he failed to pay the rent because of the following:

- The dishwasher does not work.
- The stove and fridge do not work.
- The house was previously used as a grow operation and there is mold.
- The house is scheduled for demolition.

The Residential Tenancy Act provides that a tenant cannot withhold rent until he has first obtained an order for an arbitrator permitting this action. The tenant has failed to apply for arbitration.

The representative of the landlord sought the standard Order for Possession on 2 days notice. The tenant testified he wife has terminal cancer and sought a 10 day delay in the effective date of the Order for Possession. I granted the landlord an Order for Possession effective December 4, 2016..

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 June (\$1450 is owed), July (\$1450 is owed), August (\$950 is owed), September (\$1450 is owed), October (\$1450 is owed) and November (\$1400 is owed) and the sum of \$8200 remains owing. 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 \$8200 plus the sum of \$100 in respect of the filing fee for a total of \$8300.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$725. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$7575.

Conclusion:

I granted an Order for Possession effective December 4, 2016. I ordered that the Landlord shall retain the security deposit of \$725. In addition I further ordered that the Tenant(s) pay to the Landlord(s) the sum of \$7575.

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: November 24, 2016

Residential Tenancy Branch