



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 \$1400 for unpaid rent
- 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 tenant acknowledged receipt of a one month Notice to End Tenancy on November 19, 2016 that set the end of tenancy for December 13, 2016. She also acknowledged receipt of the Landlord's Application for Dispute Resolution on December 12, 2016.

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 15, 2015. The rent is \$700 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 tenant(s) failed to pay the rent for the months of October 2016, November 2016 and December 2016 and the sum of \$2100 is owed. The tenant has not paid the rent for January 2017.

The tenant continues to reside in the rental unit. She acknowledges she has not paid the rent for October 2016, November 2016, December 2016 and January 2017. She further acknowledges she has not filed a Application for Dispute Resolution for an order to cancel the Notice. However, the tenant submits she is entitled to withhold the rent because the landlord has failed to properly protect her from the conduct of another tenant.

Section 26(1) of the 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.

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. Accordingly, I granted the landlord an Order for Possession effective January 31, 2017..

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 October, November and December and the sum of \$2100 remains outstanding. I granted the landlord a

monetary order in the sum of \$2100 plus the sum of \$100 in respect of the filing fee for a total of \$2200. I have not included the rent for January 2017 as the parties indicated they would be negotiating a settlement that would deal with that issue. If the parties are unable to settle this matter the landlord has liberty to re-apply for January rent. The tenant stated she has claims against the landlord. Similarly, if the parties are unable to reach an agreement the tenant has the right to file an Application for Dispute Resolution seeking a monetary order against the landlord.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$350. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$1850.

Conclusion:

I granted an Order of Possession effective January 31, 2017. I ordered that the Landlord shall retain the security deposit of \$350. In addition I further ordered that the Tenant(s) pay to the Landlord(s) the sum of \$1850.

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: January 13, 2017

Residential Tenancy Branch