



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 \$4917,13 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 day Notice to End Tenancy was served on the Tenants by posting on December 16, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the Tenants by mailing, by registered mail to where the Tenants reside on December 23, 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 fixed term written tenancy agreement that provided that the tenancy would start on September 1, 2015, end on July 31, 2016 and become month to month after that. AC also signed the tenancy agreement as a co-tenant. The rent was \$1300 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$650 prior to the start of the tenancy.

On July 21, 2016 parties unknown broke into the rental unit and severely assaulted AC. The respondents were not present at the time. They testified they do not know the perpetrators. AC moved out of the rental unit a short time later. He told the respondents he does not know who assaulted him.

The landlord makes the following claims for the damage that resulted from that incident:

- \$231 carpet cleaning charges
- \$156.80 glass replacement
- \$554.49 carpet replacement

The landlord also claims:

- \$1299.85 for rent for December
- \$75 for late rent payments (October, November and December @ \$25 each)
- Non- payment of rent for January 2017 and February 2017.

The representative of the landlord testified the Tenants are responsible because the perpetrators were calling AC's name before they broke in.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. The tenants failed to pay the rent for December when due. The landlord served a 10 day Notice to End Tenancy on the Tenants on December 6, 2016 by posting. It is deemed received 3 days later. The Act provides that a Tenant has 5 days from receipt of the Notice to pay the arrears. If he/she pays the arrears within the 5 days the Notice is void. If the tenant pays the arrears after the 5 day period the landlord has an election to make. The landlord can accept the payment for "use and occupation" in which case the tenancy would end at the end of the rental payment period or the landlord could reinstate the tenancy. There is no evidence the landlord has agreed to reinstate the tenancy.

Further, 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 on 5 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 tenant has failed to pay the rent for the month(s) of January 2017 and the sum of \$1300 remains outstanding. I dismissed the claim for rent for December as that has been paid. I dismissed the claim for rent for February as the tenancy will be ending prior to that date. 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.
- b. I determined the landlord is entitled to \$75 for the late payment of rent for October, November and December as provided by the tenancy agreement.
- c. The landlord claimed for the following damages that were caused when unknown third parties broke into the rental unit and severely assaulted a co-tenant who has since vacated:
 - o \$231 carpet cleaning charges
 - o \$156.80 glass replacement
 - o \$554.49 carpet replacement

Section 32(3) of the Residential Tenancy Act provides as follows:

Landlord and tenant obligations to repair and maintain

32 (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I dismissed this claim as the landlord failed to provide sufficient evidence to establish that damage was caused by any of the tenants or person permitted on the residential property by the tenants. The respondents were not present when the assault took place. They do not know the names of the perpetrators. The

perpetrators broke into the rental unit and it is a reasonable inference that AC was not allowing them to enter. I do not accept the submission of the landlord that the fact the perpetrators were calling the name of AC makes the tenants liable. As a result these claims are dismissed.

In summary I ordered that the Respondents pay to the applicant the sum of \$1375 plus \$100 in respect of the filing fee for a total of \$1475.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$650. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$825.

Conclusion:

I granted an Order for Possession on 5 days notice. I ordered that the Landlord shall retain the security deposit of \$650. In addition I further ordered that the Tenant(s) pay to the Landlord(s) the sum of \$825.

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 23, 2017

Residential Tenancy Branch