



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR & 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. An Order to retain the security deposit.
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The Residential Tenancy Act provides that a party can serve another by mailing, by registered mail to where the other party resides. The Supreme Court of British Columbia and the Policy Guidelines provides that a party cannot avoid service by refusing to pick up their registered mail.

I find that the 10 day Notice to End Tenancy was served on the Tenant by mailing, by registered mail to where the Tenant resides on December 5, 2016 and that it was sufficiently served even though the Tenant failed to pick up the package. Further I find that the Application for Dispute Resolution/Notice of Hearing and Amended Application for Dispute Resolution was served on the Tenant by mailing, by registered mail to where the Tenant resides on December 21, 2016. I determined there was sufficient service even though the Tenant failed to pick up the registered mail package. Further, the landlord testified that after he received the returned package from Canada Post and he served it in person on the Tenant on January 18, 2017. 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 recover the cost of the filing fee?

Background and Evidence

The landlord and the Tenant's father entered into an oral tenancy agreement 10 years ago. The Tenant lived with his father. The tenant's father passed away approximately 4 months ago and the Tenant continued to live in the rental unit. The tenant failed to pay the rent when due and the landlord applied for arbitration. The Tenant paid the rent prior to the hearing in November and the landlord withdrew his application.

The present rent is \$990 per month payable in advance on the first day of each month. The tenant has not paid a security deposit.

The tenant failed to pay the rent for December 2016 and January 2017 and the sum of \$1980 remains outstanding. The Tenant continues to reside 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. Accordingly, I granted the landlord an Order for Possession on 2 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:

I determined the tenant has failed to pay the rent for the month(s) of December 2016 and January 2017 and the sum of \$1980 remains outstanding. 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 dismissed the claim of the landlord for the filing fee from the previous arbitration as an arbitrator does not have jurisdiction to award the filing fee from a previous application. It must be dealt with in the application that it was originally claimed. I granted the landlord a monetary order in the sum of \$1980 plus the sum of \$100 in respect of the filing fee for a total of \$2080.

Conclusion:

I granted an Order for Possession on 2 days notice. I ordered that the Tenant(s) pay to the Landlord(s) the sum of \$2080.

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 19, 2017

Residential Tenancy Branch