



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MND & FF

Introduction

The Application for Dispute Resolution filed by the landlord seeks the following:

- a. An Order for Possession pursuant to a 2 month Notice to End Tenancy for landlord use.
- b. A Monetary Order in the sum of \$362.59 for damage to a blind in a door.
- c. 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.

I find that the 2 month Notice to End Tenancy was served on the Tenant by posting on December 7, 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 December 29, 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 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 December 1, 2015. The rent is \$900 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$460 at the start of the tenancy.

The tenant has not filed an Application for Dispute Resolution for an order cancelling the 2 month Notice to End Tenancy and testified he intends to vacate at the of February.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. 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. However, the Act provides that the landlord must set the end of tenancy date on the last date of the rental payment period. The Act self-corrects a Notice. In this case the self-corrected end of tenancy date is February 28, 2017. As a result I granted an Order of Possession effectively February 28, 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

The landlord claims \$362.59 for damage to blinds that are enclosed in a glass door. The landlord testified the door which included the blinds was installed approximately 6 to 7 years ago. He lived in this rental unit for that time period without any problems. However, within 2 weeks of the tenant taking possession the blinds were damaged. The landlord relies on a quotation from Windsor Plywood to support this claim.

The tenant disputes this claim. He testified the blinds are enclosed by glass and he did not intentionally nor negligently damage them. He further testified the blinds malfunctioned. They are 6 to 7 years old. He talked to a representative of Windsor Plywood who advised him the company that made those doors went bankrupt and is no longer in business. Further, there was a problem with the blinds malfunctioning. The tenant further submits that is amounts to reasonable wear and tear.

Section 32(3) and (4) 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.

(4) A tenant is not required to make repairs for reasonable wear and tear.

After carefully considering all of the evidence I determined the landlord has failed to prove his monetary claim and accordingly the claim is dismissed for the following reasons:

- The landlord has the burden of proof to present sufficient evidence to establish his claim on a balance of probabilities.
- The landlord failed to present sufficient evidence to prove that the damage was caused by the actions or neglect of the Tenant rather than reasonable wear and tear.

- The door which included the blinds was 6 to 7 years old. The Policy Guideline provide that 10 years is the life expectancy of venetian binds.
- I accept the testimony of the tenant that the company that made the door (including the blinds) has gone out of business and that there were problems with the blinds malfunctioning.
- The landlord has not replaced the door and there is insufficient proof that the door would be replaced.

As a result I dismissed the claim for a monetary order. I dismissed the landlord's claim for the cost of the filing fee. The tenant did not dispute the 2 month Notice to End Tenancy and intended to vacate in accordance with that Notice. The landlord was not successful with his monetary claim.

Conclusion:

I granted an Order of Possession effective February 28, 2017 as the tenant did not dispute this part of the landlord's application. I dismissed the landlord's claim for a monetary order and cost of the filing fee.

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 24, 2017

Residential Tenancy Branch