



Dispute Resolution Services

Page: 1

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 based on the Tenant's notice to end the tenancy.
- b. A monetary order in the sum of \$16,669.22 for unpaid rent and strata fines
- 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 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.

I find that the one month Notice to End Tenancy was served on the by mailing, by registered mail to where the tenant resides on December 30, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served the Tenant by mailing, by registered mail to where the Tenant resides on January 6, 2017. A search of the Canada Post tracking service indicates the package was delivered on January 9, 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 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 one year fixed term written tenancy agreement that provided that the tenancy would start on April 1, 2016. The rent is \$3400 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$1650 at the start of the tenancy.

The landlord received notification from the strata that he was being fined because the tenant was using the rental property as an airbnb short term rental. The tenant denied it. However,

the landlord gave evidence that he has had a \$200 fine levied against him on 22 separate occasions to December 13, 2016. The landlord made arrangements with the strata to discuss these charges but the tenant failed to attend the meeting despite stating she would do so.

On November 24, 2016 the Tenant gave the landlord notice in writing she was terminating her tenancy on January 1, 2017.

The tenant failed to vacate the rental unit. The landlord testified her belongings were in the rental unit as of January 22, 2017. The tenant(s) failed to pay the rent for the month of January 2017 and the sum of \$3400 remains owing.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession as the Tenant gave the landlord notice in writing that she was ending the tenancy on January 1, 2017. 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:

With respect to each of the landlord's claims I find as follows:

- a. I determined the landlord is entitled to \$3400 for non-payment of rent for January 2017. The tenant continues to live in the rental unit and she failed to pay the rent.
- b. I dismissed the landlord's claims for loss of rent for February 2017 and March 2017 with liberty to re-apply. Those claims are premature. The landlord has been awarded an Order of Possession on 2 days notice. The landlord has an obligation to act reasonably to lessen his loss. In this case it may be the landlord is able to re-rent the rental unit for those months and therefore not suffer a loss.
- c. The landlord claimed the sum of \$6900 for strata bylaw infraction from June 6, 2016 to December 27, 2016. I determined the landlord is entitled to recover \$4400 for bylaw infractions for short term rental and noise infraction to December 13, 2016. The landlord is also seeking a bylaw charge for a Move-In fee. He testified the strata charged him this sum for a short term rental (someone walking in with a suitcase). In my view this is an abuse of their power by the strata corporation as it does not truly reflect the purpose of that charge. I am not prepared to make a monetary award against the tenant for that charge as the landlord has not exhausted all avenues of appeal of that charge. If the landlord is not able to get that charge revoked after all avenues of appeal have been exhausted the landlord has the right to re-apply.

In summary I ordered that the Tenant pay to the Landlord the sum of \$7800 plus the sum of \$100 in respect of the filing fee for a total of \$7900.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$1650. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$6250.

Conclusion:

I granted an Order of Possession on 2 days notice. I ordered that the Landlord shall retain the security deposit of \$1650. In addition I further ordered that the Tenant(s) pay to the Landlord(s) the sum of \$6250.

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 final and binding on both parties.

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 26, 2017

Residential Tenancy Branch