



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 of Possession for non-payment of rent
- b. An Order of Possession pursuant to a 2 month Notice to End Tenancy.
- c. A monetary order in the sum of \$8232.25 for unpaid rent and damages
- d. An Order to retain the security deposit.
- e. 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 respondents. 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 2 month Notice to End Tenancy was served on the Tenant by posting on January 31, 2017. I find that the 10 day Notice to End Tenancy was served on the Tenants by posting on April 10, 2017. I find that the Application for Dispute Resolution/Notice of Hearing was served on the Tenants by posting on April 21, 2017. The landlord also attempted to serve the Application for Dispute Resolution by mailing, by registered mail addressed to the Tenants at the rental unit on April 21, 2017. Those documents were returned to the landlord.

The landlord testified the neighbors advised her that there have been no sounds from the rental unit since early April. A smell was emanating from the rental unit and the landlord was concerned about the condition of the rental unit. She contacted one of the tenants and they agreed to meet for an inspection on April 10, 2017. The tenants failed to show and there has been no contact with the Tenants since then.. The inspection revealed the rental unit had been left in poor condition by the tenants and they appeared to have abandoned it. There is no indication the tenants have returned as the Application for Dispute Resolution/Notice of Hearing is still posted on the door.

The Residential Tenancy Act allows a landlord to serve the Application for Dispute Resolution to the door of the rental unit for the purpose of obtaining an Order of

Possession. However the Application for Dispute Resolution must be served in person or by registered mail to where the tenants reside for the purpose of obtaining a monetary order. I determined there was sufficient service for the purpose of obtaining an Order of Possession. However, I determined there is insufficient service for the purpose of obtaining a monetary order as the Tenants were not residing in the rental unit when the Application for Dispute Resolution was deemed received (5 days after mailing). The registered mail was returned to the landlord. There is no indication the Tenants are aware of this Application.

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 August 15,, 2014 and end on July 31, 2015. The parties have signed to more fixed term tenancy agreements. The rent is \$1530 per month payable on the first day of each month. The tenant paid a security deposit of \$740 on August 15, 2014.

I determined the tenants abandoned the rental unit in early April 2017.

The tenant(s) failed to pay the rent for April. However, they may have had the right to do so as the Act provides that where the landlord serves a 2 month Notice to End Tenancy the tenants are entitled to the equivalent of one month rent under section 51(1) of the Act. It is not necessary for me to determine this issue.

Analysis - Order of Possession:

The landlord requested an Order of Possession as she felt uncomfortable taking possession of the rental unit without one. I determined the landlord was entitled to an Order for Possession. The tenants have abandoned the rental unit. Further, the tenants did not make an application to set aside the 2 month Notice to End Tenancy and the 10 day Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenants have 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 hours of service. As the landlord has been successful I ordered that the tenants pay the landlord the sum of \$100 being the cost of the filing fee such sum may be deducted from the security deposit.

The tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement. I ordered that the landlord be at liberty to serve the Order of Possession on the Tenants by substitutional service by posting to the door of the rental unit and that it shall be deemed received forthwith after posting.

Analysis - Monetary Order and Cost of Filing fee:

I dismissed the claim for a monetary order with liberty to re-apply as I determined the tenants were not sufficiently served with a copy of the Application for Dispute Resolution for the purpose of obtaining a monetary order.

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: May 18, 2017

Residential Tenancy Branch