



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. A monetary order in the sum of \$1000
- b. 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 Application for Dispute Resolution/Notice of Hearing was served on the Tenants by mailing, by registered mail to where the Tenants reside on May 1, 2017.

The Application for Dispute Resolution is not as clear as it might be. I ordered the application amended to include a claim for an Order of Possession. While the Application for Dispute Resolution did not include a claim for an Order of Possession, the Details of Dispute describe how the tenants failed to vacate at the end of a fixed term. I determined the tenants were aware the landlord was making this claim and would not be prejudiced by this amendment. Further, the application for a monetary claims \$1000. In the Details of Dispute it outlines this as an attempt to recover the travel cost of the landlord's mother who was planning to move into the rental unit. At the hearing the landlord stated this was an estimate of the loss of rent. I amended the Application to provide that the claim is for loss of rent for May and June 2017.

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

On February 26, 2016 the parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on March 1, 2016, end of February 28, 2017 and the tenants would have to vacate at that time. The rent is \$2000 per month payable on the first day of each month. The tenants paid a security deposit of \$1000 at the start of the tenancy. The tenant(s) failed to vacate. The parties entered into a second fixed term tenancy agreement that provided the tenancy would commence on March 1, 2017, end on April 30, 2017 and the tenants would vacate at that time. The rent was set at \$2000 per month and the security deposit at \$1000.

The tenants failed to pay the rent for May 2017 and June 2017 and the sum of \$4000 is outstanding. The tenant(s) have remained in the rental unit.

Settlement:

At the hearing the parties entered into a settlement and they asked that I record the settlement pursuant to section 63(2) of the Residential Tenancy Act as follows:

- a. The parties mutually agree to end the tenancy on June 30, 2017.
- b. The parties request the arbitrator to issue an Order of Possession for that date.
- c. The Tenants shall pay to the landlord the sum of \$4100 which represents \$4000 for outstanding rent and \$100 filing fee.
- d. The security deposit shall be dealt with in accordance with the Residential Tenancy Act.

Analysis - Order of Possession:

As a result of the settlement I granted the landlord an Order of Possession effective June 30, 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:

I ordered that the Tenants pay to the Landlord the sum of \$4000 for rent for outstanding rent for May 2017 and June 2017 plus the filing fee of \$100 for a total of \$4100.

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.

As a courtesy to the parties I have pasted section 38 of the Residential Tenancy Act which deals with the return of the security deposit:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
 - (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.
- (6) If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.
- (7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.
- (8) For the purposes of subsection (1) (c), the landlord must repay a deposit
- (a) in the same way as a document may be served under section 88 (c),
 - (d) or (f) *[service of documents]*,
 - (b) by giving the deposit personally to the tenant, or
 - (c) by using any form of electronic
 - (i) payment to the tenant, or
 - (ii) transfer of funds to the tenant.

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: June 05, 2017

Residential Tenancy Branch