Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   FF, MNR, MNSD, OPR

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. A monetary order in the sum of $2080 for unpaid rent
  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 10 day Notice to End Tenancy was personally served on the Tenant on May 20, 2017. The Residential Tenancy Act permits a party to serve another by mailing by registered mail to where the other party resides. It is deemed received 5 days after mailing. The Supreme Court of British Columbia and the Policy Guideline provide that a party cannot avoid service by refusing to claim their registered mail. I find that the Application for Dispute Resolution/Notice of Hearing was filed by the landlord was served on the Tenant by mailing, by registered mail to where the Tenant resides and that it was sufficiently served even the Tenant failed to pick up his registered mail. 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 written tenancy agreement that provided that the tenancy would start approximately 2 years ago. The present rent is $880 per month payable in advance on the first day of each month. The tenant paid a security deposit of $430 at the start of the tenancy.

The tenant(s) failed to pay the rent when due. He made a payment of $800 on July 3, 2017. However, the sum of $1240 remains owing. The tenant(s) 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. I set the effective date of the Order of Possession for July 31, 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 determined the tenant has failed to pay the rent for the month(s) of June and July 2017 and the sum of $1240 remains outstanding. I granted the landlord a monetary order in the sum of $1240 plus the sum of $100 in respect of the filing fee for a total of $1340.

Security Deposit:
I determined the security deposit plus interest totals the sum of $430. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of $910.

Conclusion:
I ordered that the Landlord shall retain the security deposit of $430. In addition I further ordered that the Tenant(s) pay to the Landlord(s) the sum of $910.

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 in 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: July 24, 2017

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Residential Tenancy Branch