



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 for non-payment of rent
- b. A monetary order in the sum of \$3285 for unpaid rent plus loss of rent to the date of the hearing
- 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 a representative 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 served on the Tenant by posting on July 5, 2017. 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 August 21, 2017. The landlord testified that a search of the Canada Post tracking service indicates the tenant received the packaged on August 24, 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 written tenancy agreement that provided that the tenancy would start on January 1, 2017 and continue on a month to month basis. The rent is \$1300 per month payable on the first day of each month. The tenant paid a security deposit of 650 at the start of the tenancy.

The tenant(s) failed to pay the rent for the months of April (\$1300 is owed), July (4650 is owed), September (\$1300 is owed) and October (\$1300 is owed) and the sum of \$4550 remains owing to the end of October 2017.

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) has 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 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:

I determined the tenant has failed to pay the rent for the month(s) of April (\$1300 is owed), July (4650 is owed), September (\$1300 is owed) and October (\$1300 is owed) and the sum of \$4550 remains owing to the end of October 2017. I determined the landlord has given sufficient notice of their intention to claim for all of last month as provided in the Application for Dispute Resolution. I dismissed the landlord's claim for a late fee of \$35 per month. The Residential Tenancy Act only permit a landlord to charge a maximum of \$25 for a late fee provided this is included in the tenancy agreement. As the late fee charged by the landlord exceeds this sum it must be dismissed. I granted the landlord a monetary order in the sum of \$4550 plus the sum of \$100 in respect of the filing fee for a total of \$4650.

I dismissed the claim for loss of rent for November 2017 with liberty to re-apply. That claim is premature and it is possible the landlord will re-rent the rental unit before the end of November and reduce their loss.

Conclusion:

I granted an Order of Possession on 2 days notice. I further ordered that the Tenant(s) pay to the Landlord(s) the sum of \$4650.

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: November 07, 2017

Residential Tenancy Branch