



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVONSHIRE PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MNDC, MND, MNSD, OPC, CNC, FF*

Introduction

This hearing dealt with applications by both the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for the cost of restoration after a flood and for the filing fee. The landlord also applied to retain the security deposit. The tenant applied to cancel the notice to end tenancy for cause.

The landlord served the notice of hearing and an evidence package by registered mail on October 30, 2017 and filed a copy of the tracking slip. Despite having been served the notice of hearing and having applied for dispute resolution, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions. Since the tenant did not attend this hearing, his application is dismissed without leave to reapply.

Issues to be decided

Is the landlord entitled to an order of possession and a monetary order for the cost of restoration and for the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The landlord testified that the tenancy started on December 01, 2008. The monthly rent is \$1,301.00. Prior to moving in, the tenant paid a security deposit of \$512.00

The landlord stated that on June 23, 2017 the tenant passed out in his bath tub which caused an overflow. There was damage to the rental unit and the surrounding units. The landlord carried out restoration of all the damage and filed into evidence proof of the costs incurred.

On August 25, 2017 the landlord served the tenant with a notice to end tenancy for cause. The tenant disputed the notice in a timely manner but failed to attend the hearing.

The landlord has applied for an order of possession and is claiming the cost of restoration in the amount of \$10,203.45. The landlord has filed adequate evidence to support her claim.

Analysis

Since the applicant did not call into the conference call, his application is dismissed without leave to reapply. Accordingly, the notice to end tenancy is upheld. The effective date of the notice is September 30, 2017.

Section 55 of the *Residential Tenancy Act* addresses an order of possession for the landlord and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case, I find that the landlord served the tenant with a notice to end tenancy that complies with section 52 (form and content of notice to end tenancy). Since the tenant did not attend the hearing, I have dismissed the tenant's application for dispute resolution and have upheld the notice to end tenancy.

Under the provisions of section 55, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order

may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Based on the sworn testimony of the landlord and in the absence of any contradictory evidence, I accept the landlord's evidence in respect of the claim. I find that the landlord incurred costs in the amount of \$10,203.45 to restore the damage caused by the overflowing of the bath tub in the rental unit. Since the landlord has proven her claim, she is also entitled to the recovery of the filing fee of \$100.00.

I order that the landlord retain the security deposit of \$512.00 and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$9,791.45. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective two days after service on the tenant. .

I grant the landlord a monetary order in the amount of **\$9,791.45**

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: December 01, 2017

Residential Tenancy Branch