



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MDSD & FF

The Application for Dispute Resolution filed by the Tenant(s) makes the following claims:

- a. An order for more time to make this application
- b. An order to cancel the 10 day Notice to End Tenancy dated December 2, 2017
- c. A monetary order in the sum of \$650
- d. A repair order
- e. An order that the landlord comply with the Act, regulation and/or the tenancy agreement
- f. An order that the tenant recover the cost of the filing fee

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 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 landlord and in the absence of the tenant(s) 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.

The landlord testified that the 10 day Notice to End Tenancy was served on the Tenant(s) by posting on December 3, 2017. The Application for Dispute Resolution filed by the Tenant states it was received on December 8, 2017. I find there was sufficient service of the 10 day Notice to End Tenancy. I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was personally served on the Tenant(s) on December 21, 2017.

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant(s) are entitled to an order cancelling the 10 day Notice to End Tenancy dated December 2, 2017?
- b. Whether the tenant(s) are entitled to an order that the landlord comply with the Act, regulation and/or the tenancy agreement?
- c. Whether the Tenant(s) are entitled to a monetary order and if so how much?
- d. Whether the Tenant(s) are entitled to a repair order?
- e. Whether the tenant(s) are entitled to recover the cost of the filing fee?

- f. Whether the landlord is entitled to an Order for Possession?
- g. Whether the landlord is entitled to A Monetary Order and if so how much?
- h. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- i. 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 December 1, 2017. The rent was \$1650 per month payable on the 31st day or first day of each month. The tenant paid a security deposit of \$800 at the start of the tenancy.

The tenant(s) failed to pay the rent for the month of December when due. On December 5, 2017 the Tenants paid \$1000 of the rent for December. On December 20, 2017 they paid the balance of \$650. The landlord accepted the payment “for use and occupation only.”

The rent for January was paid in 3 payments with the last payment being made on January 31, 2018. The Tenants failed to pay the rent for February.

The tenants continue to reside in the rental unit.

Tenant's Application:

The tenants failed to appear at the hearing. As a result I dismissed the tenants' application including the application to cancel the 10 day Notice to End Tenancy and a monetary order without leave to re-apply..

The Act proves that where a Tenant is served with a 10 day Notice to End Tenancy they have 5 days to pay the arrears. If they pay it within that period the Notice is void. The tenants failed to pay the rent within 5 days of receiving the notice. The rent was subsequently paid but the landlord accepted the payment “for use and occupation only.” The landlord has not reinstated the tenancy. The 10 day Notice to End Tenancy is in the approved government form.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result 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.

Landlord's Application - Order of Possession:

For the above reasons I granted an Order of Possession on 2 days notice.

Analysis - Monetary Order and Cost of Filing fee:

The rent for December 2017 and January 2018 has been paid (although paid late). Thus there is no basis for a monetary order. The landlord has liberty to file a new Application for Dispute Resolution if the landlord has lost rent for February 2018.

I ordered that the Tenant(s) pay to the landlord the sum of \$100 for the cost of the filing fee such sum may be deducted from the security deposit.

Conclusion:

I ordered the tenants' application be dismissed without leave to re-apply. I granted an Order of Possession on 2 days notice. I ordered that the Tenants pay to the landlord the cost of the filing fee such sum may be deducted from the security deposit.

This decision is final and binding on the 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: February 08, 2018

Residential Tenancy Branch