



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL, MNDL, MNRL, OPR

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 \$29,875 for unpaid rent and damages
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of the applicant and an agent for the respondent. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached.

The landlord testified he served a 10 day Notice to End Tenancy on the Tenant by posting on February 8, 2018. The tenant applied to dispute the Notice. The hearing was set for April 18, 2018. However, the hearing was cancelled with the consent of both parties on March 29, 2018.

The landlord testified he served the landlord's Application for Dispute Resolution on the Tenant by mailing, by registered mail to where the Tenant resides on April 5, 2018. The documents were returned to him by Canada Post.

The tenant uploaded some 60 pages of materials to the hearing site on April 26, 2018. The landlord testified he has not received the tenant's evidence. It includes a letter dated April 26, 2018 that states she received an Evidence Deadline Reminder from the Residential Tenancy Branch on April 24, 2018. This was the first time she was aware the landlord had filed a claim. She contacted the Branch and was advised by the Branch of the date and time of the hearing and the access codes. The letter further states that she vacated the rental unit on March 26, 2018. The letter states that she is presently overseas and not able to attend the hearing.

The landlord stated he was not aware that the tenant had vacated the rental unit.

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:

The parties entered into a tenancy agreement that provided that the tenancy would start on October 17, 2018. The rent is \$850 per month payable in advance on the first day of each month. The tenant was supposed to pay a security deposit of \$425 but failed to do so.

In the circumstances I determined that it was appropriate to sever the landlord's monetary claims with leave to re-apply for the following reasons.

- The landlord claims over \$29,000 in damages. The letter indicates that the tenant disputes this claim. However, it does not appear the tenant has received the evidence that the landlord intends to rely on.
- The tenant only became aware of the landlord's claim on April 24, 2018. I determined she has not been given sufficient opportunity to prepare a defense. The tenant is presently out of the country.
- The evidence relied on by the landlord that has been uploaded is confusing and difficult to follow. The landlord is encouraged to upload the same document with numbered pages that he will serve on the Tenant should he file another claim. The monetary order worksheet filed by the landlord is confusing and insufficient to give the respondent properly notice of the claims being made against her.
- I considered adjourning the hearing of both the monetary claim and the claim for an Order of Possession. However, the landlord stated he needed the Order of Possession so that he could regain possession of the rental unit and re-rent it.

In the circumstances I determined that it was appropriate to consider the landlords' application for an Order of Possession but to sever the landlords' claim for a monetary order with liberty to re-apply.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. Based on the letter of the tenant I determined the tenant has abandoned the rental unit as it states she moved out on March 26, 2018. The agent for the tenant confirmed her client advised her that she has moved out.

Further, the tenant has cancelled her application to set aside the February 8, 2018 10 day Notice to End Tenancy. 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 forthwith upon service.

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 landlord's application for a monetary order be severed with leave to re-apply. I dismissed the claim to recover the cost of the filing fee.

Conclusion:

I granted an Order of Possession forthwith upon service. I severed the landlord's application for a monetary order with leave to re-apply. I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period

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: May 08, 2018

Residential Tenancy Branch