



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: FFL, MNDCL-S, MNR-S OPC

Introduction

The Application for Dispute Resolution filed by the landlord seeks the following:

- a. An Order for Possession for cause
- b. A Monetary Order in the sum of \$2400 for non-payment of rent.
- c. An Order to retain the security deposit.
- d. An Order to recover the cost of the filing fee.

The tenant(s) failed to appear at the scheduled start of the hearing which was 9:30 a.m. on October 26, 2018. The landlord was present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the schedule start time in order to enable the tenant to call in. The tenants failed to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I then proceeded with the hearing. The landlord was given a full opportunity to present affirmed testimony, to make submissions and to call witnesses.

On the basis of the solemnly affirmed evidence presented at the hearing a decision has been reached. All of the evidence was carefully considered.

I find that the Notice to End Tenancy was served on the Tenant(s) by posting on August 29, 2018. It is deemed received 3 days later. The Act permits a party to serve another by mailing, by registered mail to where they reside. The Policy Guidelines provide that a party cannot avoid service by refusing to pickup their registered mail. The Act provides that it is deemed received 5 days later. I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was served on the Tenants by mailing, by registered mail to where the Tenants reside on September 14, 2018. I determined there was sufficient service even through the Tenants failed to pick up their 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 on April 1, 2018. The rent is \$1200 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$1200..

I determined the Tenants were late paying the rent for the months of May, June, July and August 2018. The tenant(s) failed to pay the rent for the months of September and October 2018 and the sum of \$2400 remains owing. The tenant(s) continue to reside in the rental unit. .

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. The landlord served a one month Notice to End Tenancy for repeated late payment of rent on August 29, 2018. 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 October 31, 2018 as the Act provides that where the landlord serves a Notice to End by Posting it is deemed received 3 days later or in this case it is deemed received on September 1, 2018. The Act requires the landlord to give a clear month Notice. The Act self-corrects an improperly dated Notice and in this case it sets the end of tenancy date for October 31, 2018.

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 September and October 2018 and the sum of \$2400 remains outstanding. 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 granted the landlord a monetary order in the sum of \$2400 plus the sum of \$100 in respect of the filing fee for a total of \$2500.

Security Deposit

I determined the security deposit plus interest totals the sum of \$1200. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$1300.

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 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: October 26, 2018

Residential Tenancy Branch