



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNRL-S & FFL

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 \$3750 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 11:00 a.m. on December 7, 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 tenant(s) 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 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 10 day Notice to End Tenancy was served on the Tenants by posting on front door to the rental unit on September 7, 2018.

Further I find that the Direct Request Application for Dispute was served on the Tenants on October 24, 2018 by mailing, by registered mail to where the Tenants reside. The adjudicator determined she could not make a determination and ordered that a hearing be conducted. I find that the Interim Order and Notice of Reconvened Hearing were served on the Tenants by mailing, by registered mail to where the Tenants reside on November 3, 2018. Further, I find that the Amended Application for Dispute Resolution which corrected the names of the Tenants and increasing the monetary claim to \$3750 was sent to the Tenants by registered mail on November 17, 2018. With respect to each of the applicant's claims I find as follows:

Preliminary Matter:

The adjudicator in the Direct Request Application determined that she could not consider the landlord's claim and ordered an oral hearing on the basis that it may be that the tenants were sharing cooking and bathroom facilities and that the Residential Tenancy Act may not apply. The landlord testified that the rental unit is a separate rental unit in the basement of the house in which she is residing and that the tenants do not share cooking and bathroom facilities. As a result I determined the Residential Tenancy Act applies and that I have jurisdiction.

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:

On October 24, 2017 the parties entered into a fixed term written tenancy agreement that provided that the tenancy would start on November 1, 2018 and end on April 30, 2019. The rent is \$1250 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$625 at the start of the tenancy.

The tenant(s) failed to pay the rent for the months of September 2018, October 2018 and November 2018 and the sum of \$3750 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. There is outstanding rent. 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 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 September, October and November 2018 and the sum of \$3750 remains outstanding. I granted the landlord a monetary order in the sum of \$3750 plus the sum of \$100 in respect of the filing fee for a total of \$3850.

Security Deposit

I determined the security deposit plus interest totals the sum of \$625. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$3225.

Conclusion:

I granted an Order of Possession on 2 days notice. I ordered that the landlord shall retain the security deposit of \$625. In addition I further ordered that the Tenants pay to the Landlord the sum of \$3225.

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 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: December 07, 2018

Residential Tenancy Branch