



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 \$7000 for non-payment of 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 both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 Notice to End Tenancy was personally served on the Tenant(s) on March 1, 2019. Further 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 March 18, 2019. 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 4 month written tenancy agreement that provided that the tenancy would start on December 1, 2018 and end on April 1, 2019. The agreement indicates that it is a sublease. The rent was \$1750 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$875 at the start of the tenancy.

The landlord testified the tenant(s) failed to pay the rent for January 2019 (\$1750 is owed), February 2019 (\$1750 is owed), March (\$1750 is owed) and April (\$1750 is owed) and the sum of \$7000 remains outstanding.

The tenants did not dispute that the rent for January, February, March and April 2019 was owed. However, they submitted that the landlord failed to provide proper high speed internet. He also testified that he is doing all he can to get the rent and he expects he will be able to pay the arrears shortly. The tenants also disputed the nature of the fixed term sublease.

The landlord disputed the evidence of the tenant as to the inadequacies of the internet.

Analysis:

I determined that the tenant(s) failed to pay the rent for January 2019 (\$1750 is owed), February 2019 (\$1750 is owed), March (\$1750 is owed) and April (\$1750 is owed) and the sum of \$7000 remains outstanding. The Tenants did not dispute this evidence.

I do not accept the submission of the Tenants that their dispute with the landlord allows them to withhold the rent. Section 26(1) of the Residential Tenancy Act provides as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

It is not necessary to determine whether the landlord failed to provide what was agreed as the Tenants did not have a right to withhold the rent.

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.

Section 46(5) of the Act provides as follows:

46(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I determined the tenants failed to prove that allegation that the landlord told them they did not have to respond to the 10 day Notice to End Tenancy. The provisions set out in the Notice clearly explain the obligation of the Tenants to make an application and the consequences of failing to do so.

The Act provides that where a tenant failed to make an application to dispute a Notice to End Tenancy 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 determined given that rent has not been paid in 4 months that it is appropriate to set the effective date of the Notice to End Tenancy for 2 days after 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 determined the tenant has failed to pay the rent for the month(s) of January 2019 (\$1750 is owed), February 2019 (\$1750 is owed), March (\$1750 is owed) and April (\$1750 is owed and the sum of \$7000 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 \$7000 plus the sum of \$100 in respect of the filing fee for a total of \$7100.

Security Deposit

The landlord stated that she wished to withdraw the claim to keep the security deposit. As a result I dismissed the landlord's claim to keep the security deposit with liberty to re-apply.

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: April 23, 2019

Residential Tenancy Branch