



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPE, MNRL – S, MNDCL - S, & FFL

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 \$2685 for unpaid rent and damages
- 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. The parties acknowledged they had received the documents of the other party.

I find that the one month Notice to End Tenancy was served on the Tenants by mailing, by registered mail to where the tenants reside on May 7, 2019. I find that the 10 day Notice to End Tenancy was served on the Tenants by mailing, by registered mail to where the tenants reside on May 9, 2019. The agent for the landlord testified that he has conducted a search of the Canada Post Tracking service and it states that on May 10, 2019 a Notification of the registered mail pack was left with the Tenants and on May 21, 2019 a Final Notice of the Registered Mail package was left with the Tenants.

Further I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was sent to the Tenants by mailing, by registered mail on June 14, 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:

On March 23, 2019 the parties entered into a written tenancy agreement that provided that the tenancy would start on April 1, 2019 and continue on a month to month basis. The rent is \$895 per month payable on the first day of each month. The tenants paid a security deposit of \$447.50 on March 23, 2019.

The landlord CF testified that the tenants paid the rent for April and the security deposit in the form of cash and she issued a receipt prior to April 1, 2019. She further testified the tenant failed to pay the rent for May, June and July 2019 and the sum of \$2685 remains outstanding.

The tenants testified they were never served with a copy of the two Notices to End Tenancy. Further, they testified that they paid the rent in the form of cash to JF. They acknowledge the rent for June 2019 and July 2019 has not been paid. They testified they do not have a bank account and cannot pay by cheque or e-transfer. The landlord has not come to pick up the cash.

JF testified he has never received the rent in the form of cash from the tenants or anyone in this complex. CF acknowledged the tenants paid cash in March for the security deposit and rent for April which she issued a receipt. She further testified the landlord is not prepared to accept cash payments. She has not received the rent for May, June and July 2019

Analysis

In *Faryna v. Chorny*, [1952] 2 D.L.R. 354, the B.C. Court of Appeal set out the following test for assessing credibility:

“The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carries conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. (page 357)”

After carefully considering all of the evidence I determined the evidence of the tenants is not credible. The tenant was not able to provide specifics as to when and where she allegedly paid the rent to JF. JF was clear in his evidence stating he has never accepted cash rent payments from this property. I prefer the evidence of JF to that of the Tenants.

Further, the Residential Tenancy Act provides that where a party serves another by mailing, by registered mail it is deemed received 5 days later. Policy Guideline #12 includes the following:

“Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the

Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.”

The evidence of Tenants is not credible on this issue of whether they were aware a package from the landlord (which contained the Notices to End Tenancies) was sent by registered mail. The Tenants deny being aware of the Notification slips. Those slips were sent by Canada Post in the ordinary course of business. The tenant initially denied receiving it. Later they said it may have been disposed of with other junk mail. The agent for the landlord visited them and told them of the Notices and that they should contact the landlord. The agent did not have the file with him and could not provide a copy of the Notices. The tenants failed to inquire further with the landlord. They had the address and phone number of the landlord and could have easily contacted the landlord. The explanation of the tenants that they were not aware of what to do is not satisfactory.

In summary I do not accept the evidence of the Tenants and I determined that they refused or deliberately chose not to pick up the registered mail. I further do not accept the evidence of the Tenants that they paid the rent for May 2019.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. I determined the landlord sufficiently served the one month Notice to End Tenancy and the 10 day Notice to End Tenancy by registered mail. They are is deemed received 5 days after mailing. I determined the tenants refused or deliberately did not pick up those documents and that there has been sufficient service. 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 July 31, 2019.

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 May 2019, June 2019 and July 2019 and the sum of \$2685 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 \$2685 plus the sum of \$100 in respect of the filing fee for a total of \$2785.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$447.50. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$2337.50.

Conclusion:

I granted an Order of Possession effective July 31, 2019. I ordered that the Landlord shall retain the security deposit of \$447.50. In addition I further ordered that the Tenant(s) pay to the Landlord(s) the sum of \$2337.50.

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 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: July 22, 2019

Residential Tenancy Branch