



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MDSD & FF

The Application for Dispute Resolution filed by the Tenants seeks an order to cancel a 10 day Notice to End Tenancy dated June 3, 2019.

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 \$3650 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 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 Tenants on June 3, 2019. Further I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing filed by each party was personally served on the other. 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 tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated June 3, 2019?
- b. Whether the landlord is entitled to an Order for Possession?
- c. Whether the landlord is entitled to A Monetary Order and if so how much?
- 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 September 10, 2015 and continue on a month to month basis. The rent was \$1200 per month payable on the first day of each month. The landlord has given two Notices of Rent Increases and the rent has been increased to \$1290 per month. The tenants paid a security deposit of \$600 at the start of the tenancy.

The tenant(s) failed to pay the rent and have fallen into arrears. They presently owe the sum of \$4940. The tenant(s) continue to reside in the rental unit.

Tenant's Application:

The landlord testified that the tenants owe the sum of \$4940 in outstanding rent. The tenants did not dispute the amount claimed in outstanding rent.

The tenants testified they replaced the floors but did not ask the landlord for compensation. There have also been a number of problems with the rental unit.

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.

I determined the law requires that the Tenants must pay the rent even where the landlord has failed to comply with the Act unless they have first obtained a monetary order against the landlord and an order allowing them to apply the monetary order against outstanding rent.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. There is outstanding rent. The landlord has used the approved government form. As a result I dismissed the tenant's application to cancel the Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result 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.

Landlord's Application - Order of Possession:

For the reasons set out above I granted an Order of Possession.

Analysis - Monetary Order and Cost of Filing fee:

I determined the tenant has failed to pay the rent and October and the sum of \$4940 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 \$4940 plus the sum of \$100 in respect of the filing fee for a total of \$5040.

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.

Conclusion:

I dismissed the tenants' application to cancel the 10 day Notice to End Tenancy and granted an Order of Possession effective July 31, 2019. I ordered that the Tenants pay to the landlord the sum of \$5040.

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: July 23, 2019

Residential Tenancy Branch