



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT, MNRL-S, OPC, OPR, FFL

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order to cancel the 10 day Notice to End Tenancy dated June 2, 2019.
- b. An order that the tenant recover the cost of the filing fee

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order of Possession for non-payment of rent
- b. An Order of Possession for cause.
- c. A monetary order in the sum of \$1200 for unpaid rent
- d. An order to retain the security deposit
- e. 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 personally served on the Tenant on April 15, 2019. I find that the 10 day Notice to End Tenancy was sufficiently served on the Tenant by posting on June 2, 2019. Further I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing filed by each party was sufficiently served on the other as each acknowledged receipt of these documents.

I ordered that the landlord's application be amended to included a claim for rent for July 2019 in the sum of \$1200.

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 August 6, 2019?
- b. Whether the tenant is entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to an Order for Possession?
- d. Whether the landlord is entitled to A Monetary Order and if so how much?
- e. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- f. 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 December 12, 2018. The rent was \$1200 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$600 at the start of the tenancy.

The landlord testified the tenant failed to pay the rent for June 2019 (\$1200 is owed) and July 2019 (\$1200 is owed) and the sum of \$2400.

The landlord also testified as to the following late payments:

- The rent for April 2019 was not paid until April 7, 2019.
- The rent for March 2019 was not paid until March 4, 2019.
- The rent for January 2019 was not paid until January 2, 2019.

In addition the tenant did not pay the rent for May 2019 until May 24, 2019.

Tenant's Application:

I accept the testimony of the landlord that the tenant owes the rent for June 2019 and July 2019 and the sum of \$2400 is outstanding. The tenant did not dispute this evidence. The landlord used the approved government form. The tenant testified there are problems with the condition of the rental unit. Section 26(1) 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.

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. There is outstanding rent. In the circumstances of this case the tenant does not have a legal right to withhold the rent even if there are deficiencies in the rental unit. The landlord used the approved form. As a result I dismissed the tenant's

application to cancel the 10 day Notice to End Tenancy. I order that the tenancy shall end.. I further order that the application of the tenant for the cost of the filing fee be dismissed.

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 of Possession. With the consent of the landlord 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 determine the landlord is entitled to an Order of Possession on the basis of non payment of rent. .

I further determined the landlord is entitled to an Order of Possession on the basis of the one month Notice to End Tenancy. The landlord served the one month Notice to End Tenancy on the Tenant on April 15, 2019. Repeated late payment of rent is one of the grounds set out in that Notice to End Tenancy. The Policy Guideline provide that 3 late payments is sufficient to end the tenancy on the basis of repeatedly late payment of rent. The tenant failed to pay the rent on time for the months of January 2019, March 2019 and April 2019. Further, the Tenant(s) has 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.

Analysis - Monetary Order and Cost of Filing fee:

I determined the tenant has failed to pay the rent for the month(s) of June 2019 and July 2019 and the sum of \$2400 remains outstanding. 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 \$600. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$1900.

Conclusion:

I dismissed the Tenant's application to cancel the 10 day Notice to End Tenancy and granted an Order of Possession. With the consent of the landlord I set the effective date of the Order of Possession for July 31, 2019. I determined the landlord was entitled to a monetary order in the

sum of \$2500 including the cost of the filing fee. I ordered that the landlord shall retain the security deposit. In addition I ordered that the Tenant pay to the Landlord the sum of \$1900.

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: July 18, 2019

Residential Tenancy Branch