



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL - OPR

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 \$4800 for unpaid rent
- 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. The parties acknowledged they had received the documents of the other party.

I find that the 10 Notice to End Tenancy was served on the Tenant by posting on June 4, 2019. Further I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was served on the tenant by mailing, by registered mail to where the tenant resides on June 21, 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 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 October 1, 2017 and end on September 30, 2018. The rent was \$1770 per month. The tenant paid a security deposit of \$885. The parties subsequently

entered into a second fixed term tenancy agreement that provided that the tenancy would start on October 1, 2018 and end on September 30, 2019. The rent is \$1800 per month payable on the first day of each month.

The tenant failed to pay the rent for June when due and the landlord served a 10 day Notice to End Tenancy on the Tenant. The tenant paid the rent for June in late August. He paid the rent for July 2019 on July 19, 2019 and the rent for August 2019 on August 3, 2019. The landlord does not wish to reinstate the tenancy.

The tenant(s) continues 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) 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.

The Residential Tenancy Act provides that where a landlord serves a 10 day Notice to End Tenancy on the Tenant can void the Notice if the rent is paid within 5 days. However, if the tenant is not paid within the 5 days but is paid later the landlord can elect to reinstate the tenancy or can accept the payment for use and occupation and require that the tenant vacate at the end of the rental payment period. The landlord has elected to end the tenancy.

The landlord testified the tenant failed to pay the rent when due on many occasions and seeks to end the tenancy. The tenant does not dispute the late payment. He testified he has faced business difficulties with customers failing to pay their accounts. Further, his wife recently gave birth. The tenant requested that he be permitted to stay in the rental unit or that he be given to the end of September to leave. The landlord refused.

I determined that the landlord is legally entitled to an Order of Possession effective August 31, 2019. The Act no longer gives the arbitrator the authority to grant and extension of time to pay the rent. Accordingly, I granted the landlord an Order for Possession effective August 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:

The rent has been paid. However, I determined the landlord is entitled to recover the cost of the filing fee. I ordered that the tenant pay to the landlord the sum of \$100 for the cost of the filing fee.

Conclusion:

I granted an Order of Possession effective August 31, 2019. In addition I ordered that the Tenant(s) pay to the Landlord(s) the sum of \$100.

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: August 06, 2019

Residential Tenancy Branch