



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPL, OPR, MNRL-S & FFL

Introduction

The Application for Dispute Resolution filed by the landlord seeks the following:

- a. An Order for Possession for landlord use and for cause.
- b. A Monetary Order in the sum of \$8795 for non-payment of rent and damage to the rental unit.
- c. An Order to recover the cost of the filing fee.

The tenant(s) failed to appear at the scheduled start of the hearing which was 11:00 p.m. on November 14, 2019. The landlord was present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the schedule start time in order to enable the tenant to call in. The tenant(s) failed to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I then proceeded with the hearing. The landlord was given a full opportunity to present affirmed testimony, to make submissions and to call witnesses.

On the basis of the solemnly affirmed evidence presented at the hearing a decision has been reached. All of the evidence was carefully considered.

I find that the 2 month Notice to End Tenancy was served on the Tenant by posting on June 1, 2019. I find that the 10 day Notice to End Tenancy was served on the Tenant by posting on September 2, 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 September 13, 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 tenancy began in 2005. The rent is \$750 per month payable in advance on the first day of each month. The tenant did not pay a security deposit or a pet damage deposit.

The landlord testified the tenant(s) failed to pay the rent as follows:

- \$1115 in arrears of rent to February 1, 2019.
- \$215 for March 2019
- \$215 for the months of April/May 2019
- \$750 for June 2019
- \$400 for July 2019
- \$750 for August 2019
- \$750 for September 2019
- \$750 for October 2019
- \$750 for November 2019.

The sum of \$5695 remains owing in rent to the end of November 2019. However, as the tenant was served with a 2 month Notice to End Tenancy he is entitled to the equivalent of one month free rent which can be applied to the amount owing leaving a balance owing of \$4945.

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. On June 1, 2019 the landlord served a 2 month Notice to End Tenancy on the Tenant that set the end of tenancy for July 31, 2019. While this Notice failed to give the Tenant two clear months notice, the Act provides that an incorrectly dated Notice self corrects itself. The end of tenancy date would be August 31, 2019. 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.

Further the landlord served a 10 day Notice to End Tenancy on September 2, 2019. The tenant has not filed an Application to set aside the Notice to End Tenancy. Accordingly, I granted the landlord an Order for Possession on 2 days notice.

\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 and the sum of \$4945 remains outstanding after deducting the equivalent of one months rent the tenant is entitled to (he was served with a 2 month Notice to End Tenancy). I dismissed the claims with liberty to re-apply for the cost of repairing damage and cleaning as those claims are premature. I granted the landlord a monetary order in the sum of \$4945 plus the sum of \$100 in respect of the filing fee for a total of \$5045.

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: November 14, 2019

Residential Tenancy Branch