



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MDSD & FF

Introduction

A hearing was conducted by conference call in the presence of a representative of the applicant and in the absence of the respondents although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the 10 day Notice to End Tenancy was sufficiently served on the Tenants by posting on October 2, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenants by mailing by registered mail to where the tenants reside on October 18, 2014. The landlord testified a search of the Canada Post Tracking service indicates the package was successfully delivered on October 22, 2014. 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 parties entered into a written tenancy agreement that provided that the tenancy would start on August 1, 2014 on a month to month basis. The rent is \$900 per month payable on the first day of each month. The tenants paid a security deposit of \$450 on July 5, 2014.

The tenants failed to pay the rent for October when due on October 1, 2014. They also failed to pay the rent for November when due. On November 14, 2014 the tenants paid the rent for October and November. The landlord accepted the payment for use and occupation only. On November 23, 2014 the tenants paid the utilities for October. The tenant(s) have remained in the rental unit.

Analysis

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. The landlord served a 10 day Notice to End Tenancy on the tenants on October 2, 2014. The tenants failed to pay the rent within the 5 days that would void the Notice. The tenants subsequently paid the arrears for October and November on November 14, 2014. In such a situation the landlord has an election to make. He/she can accept the payment and reinstate the tenancy. On the other hand the landlord can accept the payment for "use and occupation only." This means the tenants must vacate the rental at the end of the rental payment period. In this case the landlord accepted the payment for "use and occupation only." **As a result I granted an Order for Possession effective November 30, 2014. I order that the tenants pay to the landlord the sum of \$50 for the cost of the filing fee such sum may be deducted from the security deposit held by the landlord leaving a balance of \$400.** The remainder of the landlord claim for a monetary order is dismissed as the outstanding rent has been paid.

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.

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 27, 2014

Residential Tenancy Branch

