



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0931396 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR OP O MNSD MNDC FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order of Possession pursuant to Sections 44(1)(b) and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

SERVICE:

Both parties attended and the tenant agreed she received the Application for Dispute Resolution by registered mail. I find that the tenant was legally served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

The landlord provided a copy of a fixed term tenancy agreement providing for vacant possession on September 30, 2014. Is the landlord now entitled to an Order of Possession and to a Monetary Order for rent owed for over holding? Is the landlord entitled to retain the security deposits to offset amounts owing and recover the filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced in February 2013 on a series of fixed term leases that were always renewed until the present lease. There is a security deposit of \$400.00 and a pet damage deposit of \$250 and rent is currently \$800 a month. It is undisputed that the tenant owes rent of \$1108.40 plus hydro of \$165.90 (total \$1274.30) to the end of November 2014.

The tenant said she had misunderstood and thought her tenancy would continue as before on another fixed term lease; she had signed the lease and forwarded it to the landlord. The landlord said there had been financial issues, the tenant had not signed that vacant possession would be given at the end of the fixed term so she thought it was prudent to end the tenancy at this point. She also had some problems communicating with the tenant. The tenant complained of the landlord's motor home parked in her backyard but I declined to hear her issues as she had not brought an application to which the landlord could respond with evidence.

After some discussion and mediation, the parties decided to settle on the following terms and conditions:

Settlement Agreement:

1. The tenant will contact the landlord with an acceptable payment plan by November 26, 2014.
2. The landlord will receive an Order of Possession effective two days from service which she agrees not to enforce provided the tenant provides her with a payment plan that is acceptable to her by November 26, 2014.
3. The landlord will receive a monetary order for \$1274.30 representing rent and hydro owed to November 30, 2014 and the pet and security deposits will be used to offset the amount owing.
4. Should the tenancy be reinstated and continue, the tenant agrees to repay the pet damage deposit of \$250 and the security deposit of \$400.
5. This agreement settles all matters between the parties to this date.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Order of Possession

Pursuant to the above noted settlement agreement, I find that the landlord is entitled to an Order of Possession effective two days from service which the landlord agrees she will not enforce provided the tenant fulfills the terms of the settlement agreement above.

Monetary Order

I find that there are rental arrears and hydro arrears in the amount of \$1274.30 November 30, 2014. As agreed, the pet damage and security deposits will be applied to offset the amount owing. If the tenancy continues, the tenant agrees she will repay the \$650 deposits to the landlord.

Conclusion:

I find the landlord is entitled to an Order of Possession effective two days from service and a monetary order as calculated below. I find the landlord is entitled to retain the security deposit and pet damage deposit to offset the amount owing and to recover filing fees paid for this application.

Calculation of Monetary Award:

Rent and hydro arrears	1274.30
Filing fee for this application	50.00
Less pet and security deposits	-650.00
Total Monetary Order to Landlord	674.30

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 19, 2014

Residential Tenancy Branch

