



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, CNC, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a monetary order for unpaid rent as well as to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenants' security deposit. The Tenants applied to cancel a Notice to End Tenancy for Cause and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there arrears of rent and if so, how much?
3. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on May 22, 2009. Rent is \$500.00 per month payable every 2 weeks commencing on May 22, 2009. The Tenants paid a security deposit of \$300.00 on April 28, 2009 and a pet damage deposit of \$300.00 on May 8, 2009.

The Landlord said the Tenants did not pay rent for the period August 14-28, 2009 when it was due and as a result, on August 16, 2009, she posted a 10 Day Notice to End Tenancy for Unpaid Rent dated August 16, 2009 on the Tenants' door. The Landlord said the Tenants paid \$250.00 on August 16, 2009 but did not pay the balance owing until August 28, 2009. The Landlord said she told the Tenants on August 16, 2009 that the balance of the rent needed to be paid within 5 days as set out on the Notice.

The Landlord also served the Tenants with a One Month Notice to End Tenancy for Cause dated July 15, 2009 which indicated the following grounds:

"Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- put the landlord's property at significant risk

Tenant has engaged in illegal activity that has, or is likely to:

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- damage the landlord's property
- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- jeopardize a lawful right or interest of another occupant or the landlord"

The Landlord claimed that she served the Tenants this Notice because she believed the Tenants were smoking marijuana in the rental unit. The Landlord, who lives in the unit above the Tenants, said she could smell marijuana in her unit and believed it was coming from the Tenant's unit. The Landlord also claimed that she saw one of the Tenants smoking something she believed was marijuana.

The Tenants admitted that they paid \$250.00 on August 16, 2009 but said they had a verbal agreement with the Landlord that they could pay the balance on August 28, 2009 with their next rent payment. The Tenants said the Landlord issued them a receipt on August 16, 2009 that indicated it was in payment of one half of the rent for August 14-28, 2009. The Tenants also claimed that they would be moving out on September 24, 2009.

The Tenants denied that they smoked marijuana in the rental unit or at all. The Tenants said they could also smell marijuana but believed it was coming from a neighbouring property. The Tenants claimed that on one occasion, the Landlord confronted them about smoking marijuana but on that day neither of them had been home all day.

Analysis

With respect to the One Month Notice, the Landlord has the onus of showing that the Tenants were smoking marijuana on the rental property as she alleged. However, the Tenants disputed that allegation and in the absence of any corroborating evidence from the Landlord, I find that there is insufficient evidence to conclude that the Tenants were smoking marijuana on the rental property. Consequently, the One Month Notice to End Tenancy for Cause is cancelled.

With respect to the 10 Day Notice, section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the amount set out on the Notice or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit at that time.

The Tenants argued that the Landlord agreed to allow them to pay the balance of the rent on August 28, 2009 which the Landlord denied. Even if this were true, s. 46(4) of



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the Act still requires that the Tenants file an application to dispute the Notice once they knew the Landlord intended to enforce the 10 Day Notice. However, as the Tenants did not dispute the 10 Day Notice, their reasons for paying the balance of the rent late are irrelevant because s. 46(5) of the Act applies. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect at 1:00 p.m. on September 10, 2009.

The Landlord claimed that there were no arrears of rent or utilities and as a result, that part of her application is dismissed. The Landlord's application to keep the security deposit is dismissed with leave to reapply. As both parties have been partially successful in this matter, I decline to award reimbursement of their respective filing fees as they would be offsetting in any event.

Conclusion

An Order of Possession to take effect at 1:00 p.m. on September 10, 2009 has been issued to the Landlord and a copy of it must be served on the Tenants. The Order of Possession may be enforced in the Supreme Court of British Columbia.

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: September 03, 2009.

Dispute Resolution Officer