



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, OPB, MNR, MNSD, MNDC, FF
CNR, PSF

Introduction

This hearing dealt with cross applications from the landlord and tenants. The landlords application is for an order of possession for unpaid rent, the tenant has breached an agreement, a monetary order for unpaid rent, to keep all or part of the security deposit, money owed or compensation for damage or loss and recovery of the filing fee. The tenant's application is to cancel a notice to end tenancy for unpaid rent and for the landlord to provide services or facilities. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

Background and Evidence

This tenancy began September 1, 2009 with monthly rent of \$1100.00, the tenants paid a security deposit of \$550.00. On February 10, 2011 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord testified that the tenants have unpaid rent in the following amounts: \$873.00, January 2011, \$1135.00, February 2011 and \$1135.00 March 2011. The tenants have also accrued late fees for November/December 2010 and January/February/March 2011 of \$125.00 in total. The landlord's agent has also submitted a charge back from the strata corporation of \$575.00 for a by-law infraction (cleaning the parking spot) and RV parking.

The landlord's agent is seeking an order of possession for unpaid rent and requested an order effective two days after service.

The tenants testified that they are behind in the rent and do not dispute the amount of rent owed. The tenants do dispute the amount of rent they are being charged by the Strata for the RV parking spot, that the RV parking rent was increased from \$10.00 to \$20.00 and then \$75.00 per month without proper notice. The tenants stated that they were to have two parking stalls (21 & 9) per their tenancy agreement yet have only been provided one. The tenants stated that because of this their truck was towed at great expense to them. The tenants stated that they have never been provided with visitor parking passes per their tenancy agreement and that this has caused them a hardship. The tenants stated that the fireplace in their rental unit does not work causing them to have very high electric bills and that it is a health hazard.

The tenants stated that they had been given until February 21, 2011 to clean the parking spot and that the area was thoroughly cleaned by February 18, 2011. The tenants noted that they were billed \$200.00 for the bylaw infraction on February 18, 2011 which was well before the deadline set by the strata corporation.

The tenants have not applied for compensation due to damage or loss, or for an unpermitted rent increase in this application however are at liberty to come back to this office and make that application should they choose, at a later date.

The tenants at this time are not seeking an order to have the landlord provide an additional parking spot or visitor passes per their tenancy agreement. The tenants requested until March 15, 2011 as a date to vacate however the landlord's agent is not at liberty to extend the tenancy.

Analysis

Based on the documentary evidence and testimony I find that the tenant was properly served with a notice to end tenancy for non-payment of rent. As the outstanding rent was not paid within 5 days the landlord is entitled to an order of possession. The landlord is also entitled to a monetary order for \$3143.00 in unpaid rent and \$125.00 in late fees.

There is considerable confusion around what amount the tenants owe for the RV parking as this amount is billed separately by the strata corporation. The tenant's rental agreement with the strata reflects \$10.00 per month however the strata's ledger reflects the tenants being charged \$20.00 per month and then \$75.00 per month for the RV parking. Therefore to ensure that the tenants are being held responsible for the correct amount and not being over-charged, the parties will need to come back under separate

application and with thorough documentation to address this concern; the landlord is not being awarded monies for the RV parking in this application.

As the tenants complied with the strata and had the parking spot cleaned prior to the deadline, the claim of \$200.00 for a bylaw infraction is hereby denied.

Conclusion

I hereby grant the Landlord an **Order of Possession**, effective **2 days** after service of the Order upon the Tenants. This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim for \$3268.00 in unpaid rent and late fees. The landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$550.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$2768.00** ($\$3268.00 + \$50.00 = \$3318.00 - \$550.00 = \2768.00)

A monetary order in the amount of **\$2768.00** has been issued to the landlord and a copy of it must be served on the tenant. If the amount is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.

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: March 4, 2011

Residential Tenancy Branch