



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes Tenant CNC, CNR, MNSD, OLC, LRE, FF
 Landlord OPC, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession for Cause and to recover the filing fee for this proceeding.

The Tenants filed to obtain an order to Cancel the Notice to End Tenancy for Cause and for Unpaid Rent, for the Landlord to comply with the Act, to restrict the Landlord's right of entry, to recover the Tenants security and pet deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on June 3, 2011 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by personal delivery on May 30, 2011.

The Landlord and Tenant both confirmed that they received the other's hearing packages.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?

Tenant:

1. Is the Tenant entitled to an order to cancel the Notices to End Tenancy?
2. Has the Landlord complied with the Act?
3. Is the Tenant entitled to an order to restrict the Landlord's right of entry?
4. Is the Tenant entitled to recover the security and pet deposits?

Background and Evidence

This tenancy started on October 31, 2009 as a fixed term tenancy with an expiry date of October 31, 2010 and was renewed for another fixed term ending of October 31, 2011. Rent is \$885.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$442.50 in October, 2009 and a pet deposit of \$442.50 on May 18, 2011.

The Landlord said that the Tenant is repeatedly late paying the rent. The Landlord submitted three 10 Day Notices to End Tenancy for unpaid rent dated February, 2011 March, 2011, and June, 2011 as well as the Tenant's rent ledger which showed repeated late payments throughout the tenancy. The Tenants agreed the rent payments are late on many months, but the Tenant said they do pay the rent over time and they pay the late fees and NSF charges. It was agreed that the Notice to End Tenancy for Cause was valid based solely on the cause of numerous late rent payments.

The Tenants said they have complied with the Landlord's requests to reduce the pets in the unit to only the two dogs on the Tenancy Agreement and they have stopped the dogs defecating on the balcony. As well the Tenant said they have paid the pet deposit now so they do not believe they are in breach of the tenancy agreement.

The Landlord said there have been complaints about the dogs by other tenants, but the Landlord said they did not include any evidence to support those complaints. The Tenant said they had not received any complaints written or verbal about their dogs from the Landlord or other tenants.

Towards the end of the conference call the Tenant said they would like to move out of the rental unit and asked if they could be given to July 1, 2011 to move out. The Landlord said she would agree to a move out time of 1:00 p.m. on June 30, 2011. In addition the Landlord said she wants to recover the unpaid rent of \$510.00 for June, 2011 and fees of \$100.00 for 2 late fees and for NSF charges.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding.

Analysis

There was much contradictory testimony and little supporting evidence from both parties with regard to the issues around the dogs and complaints about the dogs. As a result it is unclear if the Landlord has established grounds to end a tenancy based on the breach of the tenancy agreement or for reasons of disturbance or complaints about the dogs. As well the Tenant has not established grounds to cancel the Notice to End Tenancy with respect to the issues about the dogs. I find that the issues around the dogs has not been proven as a cause to end the tenancy, but there is full agreement that the Tenant have been repeatedly late with their rent payments throughout the tenancy and I find this is sufficient grounds to end a tenancy. Pursuant to section 47 (1) (b) I find for the Landlord and grant an Order of Possession with an effective vacancy date of June 30, 2011. In addition I dismiss the Tenant's application to cancel the Notice to End Tenancy as they concurred that they have been repeatedly late with the rent payments and they agreed to end the tenancy on June 30, 2011. As the tenancy is ending the balance of the Tenants application is dismissed without leave to reapply.

Pursuant to section 26 of the Act which says that a Tenant must pay rent when it is due under the Tenancy agreement, whether or not the landlord complies with this act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. I find the Landlord is entitled to retain a \$660.00 of the Tenant's security and pet deposit which represents \$510.00 of unpaid rent, \$100.00 in late and NSF fees and as the Landlord has been successful in this matter, she is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep \$660.00 of the Tenants' security deposit and pet deposit in full payment of the rent arrears and fees. The Landlord will return the balance of the deposits in the amount of \$225.00 on or within 15 days of the end of the tenancy and receiving the Tenants' forwarding address.

As the Tenants have not been successful in this matter I order the Tenants to bear the cost of the filing fee in the amount of \$50.00 for this proceeding that they have already paid.



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Conclusion

An Order of Possession effective June 30, 2011 has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia.

I Order the Landlord to retain \$660.00 of the Tenants' security and pet deposits.

The Tenants' application is dismissed without leave to reapply.

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*.

Residential Tenancy Branch