

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with applications from the landlords and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied to cancel the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The female landlord asked for permission to amend the name of the landlords by adding her husband, identified above as the male landlord, and removing her brother's name who acts as her agent on her behalf with respect to this tenancy. Her brother participated in the hearing as the landlords' agent. With the agreement of the parties, I amended both applications by inserting the male landlord's name as it appears above and removing the landlord's agent's name.

The tenants agreed that the landlord's agent handed them the 10 Day Notice and a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on May 2, 2011. The tenants confirmed that they received a copy of the landlords' dispute resolution hearing package sent by the landlord's agent by registered mail on May 29, 2011. I am satisfied that the landlords served these documents to the tenants in accordance with the *Act*.

The female tenant testified that she sent the landlords' agent a copy of her dispute resolution hearing package in the mail in mid-May 2011. Since the tenants did not file their application for dispute resolution until May 24, 2011, I requested more details on how and when she sent this package. She said that she sent this package by registered mail, but did not have a specific date or a Canada Post Tracking Number to confirm this mailing. The landlords and the landlords' agent testified that they have not received the tenants' dispute resolution hearing package. As I am not satisfied that the tenants served their application for dispute resolution to the landlords, I dismissed the tenants' application with leave to reapply. However, in so doing, I note that the tenants did not apply for a cancellation of the landlords' 10 Day Notice within the 5-day time

period allowed and did not apply to cancel the landlords' 1 Month Notice. They did not apply for an extension of time to apply to cancel either of these Notices.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession? Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover their filing fee for this application from the tenants?

Background and Evidence

This month-to-month tenancy commenced on May 15, 2010. According to the terms of the residential tenancy agreement, monthly rent of \$550.00 was payable on the 15th of the month. However, in December 2010, the parties agreed they made an oral change to that agreement modifying the date of payment to the first of each month instead of the 15th. The parties did not agree on when this change took effect. The female landlord said that the tenants were to pay 1/2 month's rent for December and to revert to full month payments on the first of January 2011. The tenants paid a \$275.00 security deposit on May 15, 2010, which the landlords continue to hold.

The landlords entered written evidence that the tenants were frequently late in paying their monthly rent and that they issued many NSF cheques. The landlords' agent issued the two Notices in the first two days of May 2011 when the tenants were in rental arrears for two months. The landlords applied for an Order of Possession for unpaid rent, repeated late payment of rent and for causing a significant risk to the landlords' property. The landlords applied for a monetary award of \$1,070.00, the amount they considered owing as of May 1, 2011. The tenants disagreed with the number of NSF cheques they had provided during this tenancy and disagreed with the timing of when the rental arrears occurred. However, they admitted that part of their May 2011 rent remained unpaid more than 5 days after the landlords' agent issued the 10 Day Notice and that they had not paid any rent for June 2011. The female tenant said that the tenants were making plans to vacate the rental unit by July 1, 2011, and hoped to have bought their own residence by then.

Analysis

Pursuant to section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute. The parties agreed to settle their dispute on the following terms:

1. The tenants agreed to provide the landlords' agent with a negotiable cheque for \$850.00 by 5:00 p.m. on June 17, 2011.
2. If the tenants comply with their agreement to provide the landlords' agent with this negotiable cheque by 5:00 p.m. on June 17, 2011, the parties agreed that this tenancy will end at 1:00 p.m. on June 30, 2011 and the tenants will vacate the rental premises by that time.
3. If the tenants do not comply with their agreement to provide the landlords' agent with this negotiable cheque by 5:00 p.m. on June 17, 2011, the parties agreed that this tenancy will end at 1:00 p.m. on June 21, 2011 and the tenants will vacate the rental premises by that time.
4. The parties agreed that the landlords will retain the tenants' security deposit.
5. The parties agreed to withdraw all remaining portions of their applications for dispute resolution.
6. These particulars comprise the full and final settlement of all outstanding issues between the parties that are before the Residential Tenancy Branch at this time.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue a monetary Order in the amount of \$850.00 to be used if the tenants do not fulfill the monetary terms of their agreement. The landlords are provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

To give effect to the settlement reached between the parties and as discussed at the hearing, I also issue two Orders of Possession to be used if necessary by the landlords if the tenants do not vacate the rental premises in accordance with their agreement. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

As per the parties' agreement, I allow the landlords to retain the tenants' security deposit.

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*.