



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR MNR FF
CNR LRE OLC MNSD MRN MNDC ERP FF

Introduction

This hearing dealt with Applications for Dispute Resolution filed by the Landlord and the Tenants.

The Landlord applied to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities, and to recover the cost of the filing fee from the Tenant for this application.

The Tenants filed seeking an order to have the notice to end tenancy canceled, and requested numerous Orders against the Landlord and to recover the cost of their filing fee.

Service of the hearing documents by the Landlord to both Tenants was done via one registered mail package sent on April 22, 2012. The Canada Post tracking number was provided in the Landlord's verbal testimony. The Landlord confirmed that based on the Canada Post website the female Tenant signed for receipt of the hearing documents. Therefore, based on the Landlord's submission I find the female Tenant has been sufficiently served notice of this proceeding.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me. No one appeared at the teleconference hearing on behalf of the Tenants, despite the female Tenant being served notice of this proceeding in accordance with the Act.

Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?

2. If so, has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order as a result of that breach, pursuant to sections 55 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord affirmed she and the Tenants entered into a written fixed term tenancy agreement that began on January 1, 2012 and was set to end on July 31, 2012. Rent was payable on the first of each month in the amount of \$1,800.00 and on December 20, 2011 the Tenants paid \$900.00 as the security deposit.

The Landlord advised that when the Tenants failed to pay the April rent she issued a 10 Day Notice to End Tenancy on April 5, 2012 and sent it to the Tenants via e-mail. She stated that last evening, May 3, 2012, around 6:00 p.m. the Tenants left her a voice message advising her they had vacated the property and requested the Landlord's presence at the unit around 9:00 p.m. to complete the move out and to return the keys. The Landlord stated she attended the unit and met with the Tenant outside at 9:45 p.m. and they asked her to go inside and check the unit but she refused because she did not feel comfortable doing so as it was late in the evening. She stated the Tenants requested the return of their deposit and when she asked for a forwarding address they told her to use the male Tenant's father's address.

The Landlord confirmed she has regained possession of the unit but stated she was only given one set of keys back. She is seeking an order of possession and a monetary order for April and May 2012 rent.

Analysis

Landlord's application

Section 88(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlord has applied for a monetary Order which requires that the Landlord serve **each** respondent Tenant as set out under *Residential Tenancy Rules of Procedures*.

In this case only one of the two Tenants, the female Tenant, has been served with the Notice of hearing documents. Therefore, I find that the request for a Monetary Order against both Tenants must be amended to include only the Tenant (s) who has been properly served with Notice of this Proceeding. As there is insufficient evidence to support that the male Tenant has been properly served the Application for Dispute

Resolution as required, the monetary claim against the male Tenant is dismissed without leave to reapply. The Monetary Claim will proceed against the female Tenant.

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

Order of Possession – I find that the Landlords have met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the Tenants failed to pay the rent within 5 days after receiving this notice, and that the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, **April 18, 2012** and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*.

The evidence supports the Tenants vacated the property as of May 3, 2012 and the Landlord has regained possession of the rental unit. Therefore there is no need to issue the Landlord an Order of Possession as she already has legal possession of the unit.

Claim for unpaid rent - The Landlord claims for unpaid rent of \$1,800.00 for April 2012, pursuant to section 26 of the *Act* a tenant must pay rent when it is due in accordance with the tenancy agreement.

Based on the aforementioned, I find that the Tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the Landlord has met the burden of proof and I award her a monetary claim of **\$1,800.00** for April 2012 unpaid rent.

Over Holding Charges – As noted above this tenancy ended **April 18, 2012**, in accordance with the 10 Day Notice and the Tenants continued to occupy or over hold the rental unit until May 3, 2012. The Landlord has been awarded the full month of rent for April 2012 above; therefore I find the Landlord is seeking overholding charges for the three days from May 1, 2012 to May 3, 2012.

Based on the aforementioned I find that the Landlord has succeeded in proving her claim and I award her **\$177.54** in overholding charges for May 2012 (3 x \$59.18 daily rent).

The Landlord has succeeded with her application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid rent for April 2012	\$1,800.00
Overholding for May 1 to May 3, 2012	177.54
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,027.54
LESS: Security Deposit \$900.00 + Interest 0.00	<u>-900.00</u>
Offset amount due to the Landlord	<u>\$1,127.54</u>

Tenants' application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the Applicant Tenants, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the Applicant Tenants called into the hearing during this time. Based on the aforementioned I find that the Tenants have failed to present the merits of their application and the application is dismissed, without leave to reapply.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$1,127.54**. This Order is legally binding and must be served upon the female Tenant.

The Landlord is at liberty to file another application if she suffers an additional loss as a result of the Tenants breaching the fixed term tenancy agreement.

The Tenants' application for dispute resolution is HEREBY DISMISSED.

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: May 08, 2012.

Residential Tenancy Branch