



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, CNR, MNDC, DRI, RP, PSF, RPP, LRE, LAT, RR, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain the security deposit, and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The tenants applied to dispute an additional rent increase; to cancel a Notice to End Tenancy for Unpaid Rent, Orders the landlord make emergency repairs, repairs, provide services or facilities required by law, that the tenants be authorized to change the locks, to reduce rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee cost.

Both parties were present at the hearing; tenant B.F. attended at the scheduled start, both tenant I.T. and the landlord entered the conference call hearing 7 minutes after the start.

Once all parties were present I again introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Preliminary Matters

The tenants indicated a number of matters of dispute on their application and confirmed that the main issue to deal with during this proceeding was the Notice to End Tenancy.

For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the tenant's request to cancel the Notice to End Tenancy for Unpaid Rent and I dismissed the balance of the tenant's claim with liberty to re-apply.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on June 1, 2012; a deposit in the sum of \$735.00 was paid.

The parties do not agree on the amount of rent owed on the first day of each month. The tenants testified that rent was \$1,450.00 until such time as specific renovations were completed; rent would then increase to \$1,500.00 per month.

The landlord submitted that rent was \$1,500.00 per month, due on the first day of each month. The landlord stated he asked the owner if rent could start at \$1,450.00, but that request was denied.

The parties talked in terms of separate rent and deposit payments having been made, but they agreed that this is a co-tenancy.

A tenancy agreement was not signed.

The tenants confirmed receipt of a 10 Day Notice to End Tenancy for Unpaid Rent on July 4, 2012. The Notice had been posted to the tenant's door on July 3, 2012.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$800.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The tenants had made an application on July 3, 2012, and after receiving the Notice on July 4, 2012, amended their application to include a request to cancel the Notice. The landlord confirmed receipt of the amended application.

B.F. stated that once the Notice was received she did not immediately go to pay the outstanding rent as she was afraid of the landlord. When she served the landlord with Notice of the first application, she had taken the police with her; the landlord was upset and she felt he had been a bit threatening.

When the tenant went to the Residential Tenancy Branch (RTB) to amend their application she was told by a staff member that they could wait to pay rent until after the outcome of the hearing. The tenant confirmed she had read the Notice and was aware of the notations which instructed that rent be paid within 5 days or that when disputing the Notice the tenant should bring forward evidence rent had been paid.

The tenant confirmed that no efforts were made to pay the rent after the Notice was received.

The landlord supplied receipts that showed each tenant paid \$725.00 rent for June, 2012. A receipt in the sum of \$750.00 was issued to the tenants for rent owed in July, 2012.

The tenants confirmed they have not provided receipts for any emergency repairs they have completed.

Analysis

I find that the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on July 13, 2012, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenants submit that they were told by RTB staff that they should not pay the rent owed until the outcome of this hearing; advice that would be counter to the Act.

The tenants confirmed the Notice had been read and that it was clear rent owed should have been paid within 5 days of July 4, 2012 and that at this hearing disputing the Notice, proof of payment should be supplied. I have rejected the tenant's submission that they were advised not to pay rent. The tenants have a responsibility to ensure that they followed the instructions that are clearly indicated on the Notice to End Tenancy. The tenants made no effort to make payment for the balance of rent owed.

Therefore, as the tenants failed to pay the balance of rent owed, pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenants.

I find, on the balance of probabilities that rent owed is \$1,450.00 per month. The landlord's agent did discuss the amount of rent owed, did state he would check to see what amount the owner would accept and then declared that rent would be \$1,500.00 not \$1,450.00.

In the absence of a written tenancy agreement, signed at the start of the tenancy, I find that the term for rent owed was vague. Therefore, in the absence of a clear, written term setting out rent owed, I have accepted the least onerous amount as the rent that was agreed upon at the time the tenants moved into the unit.

Therefore, I find that the landlord is entitled to compensation in the sum of \$700.00 for July, 2012, rent owed. The balance of the monetary claim is dismissed.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$735.00, in partial satisfaction of the monetary claim.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenants. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$750.00, which is comprised of \$700.00 in unpaid July, 2012 rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$735.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$15.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The balance of the tenant's application is dismissed with leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 23, 2012.

Residential Tenancy Branch