



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, OPB, OPC, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession, for compensation for damage to the unit, site or property, for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Landlords said they served the Tenants with the Application and Notice of Hearing (the “hearing package”) by registered mail on July 24, 2012. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlords’ hearing package as required by s. 89 of the Act and the hearing proceeded with all parties present.

At the start of the hearing the Tenant said a previous hearing #789184 had been completed and most of the issues the Landlord is applying for have been ruled on; therefore they cannot be heard again. The Tenant said she did write a letter to the Residential Tenancy Branch requesting the Landlord’s application be cancelled on the grounds that the issues have been heard and ruled on. I find there may be different issues in the Landlord’s present application therefore I dismiss the Tenants’ request to have the application cancelled.

Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Is there damage to the unit, site or property and if so how much?
3. Is the Landlord entitled to compensation for damage and if so how much?
4. Is there damage or loss to the Landlord and if so how much?
5. Is the Landlord entitled to compensation for the damage or loss and if so how much?

Background and Evidence

This tenancy started on August 1, 2007 as a month to month tenancy. Rent is \$1,200.00 per month payable by the 31 of each month or in two bimonthly payments of \$600.00 each. The Tenants paid a security deposit of \$600.00 on July 31, 2007. The Landlord said no pet deposit was required for the first dog, but they are requesting a pet deposit be paid for the second dog that was not authorized by the Landlord.

The Landlords said they issues a 2 Month Notice to End Tenancy dated July 24, 2012, with an effective vacancy date of October 1, 2012 as they want to complete repairs to the rental unit that require the Tenants to move out. The Tenants said they are not disputing the Notice to End Tenancy and they will be moved out of the rental unit by October 1, 2012. The Tenant said they agreed to the Landlord receiving an order of Possession for October 1, 2012 as long as it did not affect the compensation of 1 month's rent in the amount of \$1,200.00 or one month's free rent in the unit as compensation for issuing a 2 Month Notice to End Tenancy. Both the Landlord and the Tenant agreed to the Landlord receiving an Order of Possession dated for October 1, 2012.

The Landlord continued to say that their monetary claim is based on an estimated that a contractor did for them and at this point they understand the Tenant has the opportunity to repair the rental unit before the end of the tenancy. As well the Landlord said they have not paid for any repairs as of yet; therefore they cannot prove a monetary loss nor can they prove the amount of the damage or loss. The Landlord said they understood that a monetary claim for damage or loss must be proven with actually invoices or receipts that have been paid.

The Landlord continued to say that the Tenants' brought a second dog into the rental unit without permission and have not removed the dog or paid a pet deposit. The Landlords requested that a pet deposit be paid or the dog removed.

The Tenant said that the Landlord is rearguing the monetary issues that were heard in a previous hearing #789184 and they were told by the Residential Tenancy Branch that issues that have been ruled on cannot be heard again. As well the Tenants said that they are prepared to repair the items in the rental unit that they are responsible for and the repairs will be completed prior to their moving out on or before October 1, 2012.

The Tenant continued to say the issue of the pet deposit was decided in the last hearing and it was not considered a material term of the tenancy and therefore it was not grounds to end the tenancy.

The Landlords concluded their remarks by saying they have been very flexible with the Tenants allowing them to pay their rent late and by giving the Tenants a rent reduction on occasion to help them out. The Landlords said they understand a monetary claim for damages must be supported paid receipts and they will complete a move out condition inspection report with the Tenants and then decide what they are going to do.

The Tenants said in closing that the Landlord is rearguing issues that have been decided, they accept the tenancy ending on October 1, 2012 and they understand they will receive monetary compensation of the equivalent of 1 month's rent because of the 2 Month Notice to End Tenancy. As will the Tenants said they can remove the second dog if that is required by the Landlord.

Analysis

As both parties agree the tenancy is to end on October 1, 2012 I grant the Landlord an Order of Possession with an effective date of October 1, 2012.

Further for a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Landlord said their monetary claim is based on an estimate and that they have not paid for any repairs to date; therefore the Landlord has not proven a loss actually exists nor has the Landlords established the amount of that loss or damage; therefore I find the Landlord has not established grounds for their monetary claim and I dismiss the Landlords' monetary claims in the amount of \$4,500.00 with leave to reapply.

With regard to the pet deposit issue I do not have the authority from the Act to issue an order for the Tenants to pay a pet deposit or to remove the pet from the rental unit. This item was dealt with in the previous hearing as a non material term of the tenancy and



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therefore could not be used to end the tenancy. I have no authority to change this decision. The Landlord's claim for a pet deposit is dismissed without leave to reapply.

As the Landlord has only been partially successful in this matter, I order the Landlord to bear the cost of the filing fee in the amount of \$50.00 which they have already paid.

Conclusion

An Order of Possession effective for October 1, 2012 has been issued to the Landlords. 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.

The Landlords' damage claim for estimated repairs to the rental unit is dismissed with 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*.

Dispute Resolution Officer