



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the two tenants. The landlord's wife also attended the hearing but provided no testimony.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on April 11, 2012 for a 25 month fixed term tenancy beginning on May 1, 2012 for the monthly rent of \$1,200.00 due on the 1st of each month and a security deposit of \$600.00 was paid. The tenancy agreement stipulates a late payment fee of \$50.00; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on June 3, 2012 with an effective vacancy date of July 4, 2012 due to \$2,500.00 in unpaid rent.

Documentary evidence filed by the landlord and testimony indicates the tenants failed to pay the full rent owed for the months of June, July, August, September, and October 2012 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent personally on June 24, 2012 at 4:00 p.m.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

The landlord also seeks compensation for the differential of the amount of rent that he had advertised the rental unit for and the amount agreed upon in the tenancy agreement for 6 months in the amount of \$1,170.00; for late rent fees for 5 months \$150.00; gas for attending the Residential Tenancy Branch (RTB) for \$50.00; \$200.00 for lost time to deal with the paper work of these issues; \$4,198.00 for 3 months rent for failing to fulfil lease agreement terms.

The tenants submit that they acknowledge that they owe the landlord something but not nearly what he is claiming because the rental unit was uninhabitable. The parties agree the rental unit had previously been used as a grow operation; that the tenants agreed they would rebuild the basement into a rentable suite; and that the work had not been completed nor was any rent paid to the landlord for the period from June to October 2012.

The tenants submit that the landlord did not fulfil his part of the agreement to provide supplies to the tenants to rebuild the basement rental unit. They also submit that as a result of the grow operation toxic chemicals were impregnated into the concrete and the tenants became ill as a result. The tenants also submit they were informed by a local police officer that there was definitely a grow operation in the basement and that the landlord's occupancy permit should have been pulled.

The tenants did not report the issue to local municipal or city officials and as such have not provided into evidence any notice of a to revoke the occupancy permit. The tenants acknowledge the landlord issued them a 10 Day Notice to End Tenancy for Unpaid Rent and they did not file an Application to dispute the notice.

Analysis

I have reviewed all documentary evidence and testimony and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on June 24, 2012 and the effective date of the notice is amended to July 5, 2012, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenants are conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

I also note that despite the tenants' claims that the rental unit was uninhabitable and that they became ill living there, they have provided no evidence to support this claim such as a medical report or a report to local authorities or a notice revoking the occupancy permit. In addition, I find it unlikely that if the tenants believed these claims to be true they would have vacated the property long ago instead of living in the house and not paying any rent at all.

As to the monetary claim, I accept the parties entered into a tenancy agreement for a monthly rent of \$1,200.00 regardless of any other promises or agreements and as such the landlord is entitled to rent for the months of June, July, August, September and October 2012 in the amount of \$6,000.00.

As the tenancy agreement stipulates that there would be a charge for late payment of rent in the addendum, I find the tenants, by failing to pay rent for any of the months noted above are responsible for the late payment fees. However, the agreement states these fees are \$50.00 for each late payment and Residential Tenancy Regulation Section 7 states that the maximum for such a fee is \$25.00. I find the landlord is entitled to this late fee for 5 months at \$25.00 for a total of \$125.00.

In regard to the landlord's claim for gas and lost time for dealing with this dispute and having to drive to the RTB and to file documents etc, I find these are a cost of doing business as a landlord and are based on choices made by the landlord. For example, the landlord could have dealt with Service BC in his local community and not had to attend the RTB. For these reasons, I dismiss this portion of the landlord's Application.

And finally, in relation to the landlord's claim for 3 months rent for not fulfilling the least agreement terms, I find since I have ordered the tenancy is over the landlord is not entitled to additional rent for future months that are not yet due.

If the landlord intends to claim for damages or losses resulting from the failure of the tenants to fulfil their obligations under the fixed term tenancy agreement the landlord must show that he has suffered a loss and as the landlord has not lost any rent at this time, I find this portion of the landlord's Application to be premature and I dismiss this portion with leave to reapply, in accordance with the *Act*, should the landlord find he has suffered loss.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$6,225.00** comprised of \$6,000.00 rent owed; \$125.00 late fees and the \$100.00 fee paid by the landlord for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: October 22, 2012.

Residential Tenancy Branch