Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   OPR MNR MNSD FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord confirmed their intent on seeking money owed or compensation for damage or loss under the act regulation or tenancy agreement, by writing *"Tenant has not paid the rent for October, November, December 2012 and probably January 2013"* in the details of dispute on their original application.

Based on the aforementioned I find the Landlord's intention of seeking to recover the payment for use and occupancy or loss of rent, for a period after the tenancy ended in accordance with the 10 Day Notice, was an oversight and/or clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application. Therefore I amend their application, pursuant to section 64(3)(c) of the Act.

The Landlord also acknowledged that he has not gained entry of the rental unit to determine what repairs will be required or the actual cost of those repairs. When considering that information he advised that he wished to withdraw his claim for damages with leave to reapply at a future date.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application. .

The Landlord affirmed that he served each Tenant with copies of his application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on December 16, 2012 by registered mail. Canada Post tracking information was provided in the Landlord's testimony. Based on the submissions of the Landlord I find that each Tenant was sufficiently served notice of this proceeding, in accordance with the Act, and I proceeded in the Tenants' absence.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?

2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, a copy of the 10 Day Notice to end tenancy for unpaid rent.

The Landlord stated that the parties entered into the initial fixed term tenancy which began on July 1, 2009, and subsequent fixed terms after the initial year. The most recent tenancy began on July 1, 2012 and was set to end on June 30, 2013. Rent is payable on the first of each month in the amount of $2,750.00 and in August 2009 the Tenants paid a security deposit of $1,250.00.

The Landlord advised that when the Tenants failed to pay the October and November 2012 rents he issued a 10 Day Notice to end tenancy and posted it to their door on November 2, 2012 at 3:25 p.m. The Tenants continue to have possession of the rental unit and have not paid anything towards rent for the last four months (October, November, December 2012 and January 2013) for a total amount owing of $11,000.00.

The Landlord has sought to regain possession of the unit as soon as possible and to recover the unpaid rent.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenants are deemed to have received the 10 Day Notice on November 5, 2012, three days after it was posted to their door, and the effective date of the Notice is **November 15, 2012**, in accordance with section 90 of the Act. The Tenants did not pay the rent and did not dispute the Notice, therefore, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the *Act.* Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent of $5,500.00 for October 1, 2012 and November 1, 2012 (2 x $2,750.00). I accept that the Tenants failed to pay rent in accordance with the tenancy agreement which is a breach of section 26 of the Act. Accordingly, I award the Landlord a Monetary Award for unpaid rent of **$5,500.00**.

As noted above this tenancy ended **November 15, 2012,** in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for December 2012, and January 2013, not rent. The Tenants are still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and they will have to work to find replacement tenants. Therefore,

I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of January 2013, in the amount of **$5,500.00** (2 x $2,750.00).

The Landlord has been successful with his application; therefore I award recovery of the **$100.00** filing fee.

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service.** This Order is legally binding and must be served upon the Tenants. . In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order in the amount of **$11,100.00** ($5,500.00 + $5,500.00 + $100.00)**.** This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and 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: January 24, 2013

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Residential Tenancy Branch