



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

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 all or part of the security deposit, and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I 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 evidence and testimony provided.

Preliminary Matters

The tenants confirmed that effective May 1, 2013 the unit has been vacated. The tenants confirmed they did not return the keys to the landlord. The landlord was not aware the tenants had vacated, but may now take possession of the unit and change the locks. Therefore, the landlord does not require an Order of possession as possession has been relinquished.

The tenants were given a copy of an amended application, increasing the amount claimed to include unpaid May 2013 rent. Receipt of the amended application was not disputed.

Issue(s) to be Decided

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 January 1, 2011, a pet and security deposit in the sum of \$380.00 each was paid. A copy of the tenancy agreement was supplied as evidence. Rent began at \$760.00 and increased to \$772.00 in 2012, with a further increase to \$801.00 effective May 1, 2013. Copies of Notices of Rent Increase were supplied as evidence.

The landlord stated a Ten Day Notice to End Tenancy was given to the tenants on March 4, 2013 as only \$350.00 had been paid that month. The tenants denied receiving the Notice. The tenant's did not provide any reason as to why they eventually vacated the unit but agreed that April and May 2013 rent had not been paid.

The female tenant said she vacated in January; the landlord responded that the female had not been removed as a tenant, although they were aware she was not living at the unit. There was no dispute that the female tenant received notice of the hearing, as she attended and did not dispute receipt of the landlord's evidence.

The tenants said that a full cash rent payment was made in March 2013 and that it took the landlord's agent 2 weeks to give them a receipt. The tenants suggested that the agent kept some of the rent. The agent was then called into the hearing and affirmed. He testified that he could recall a partial payment being made in March; he could not recall the sum. He did issue a receipt and said there was delay in giving it to the tenants as he could not find them at home.

The landlord has claimed compensation in the sum of \$422.00 for March; \$772.00 April and \$801.00 for May 2013 rent owed.

Analysis

The female tenant stated she vacated the unit, but her name was not removed from the tenancy agreement; she assumed because she told the landlord she was moving that she would no longer be considered a tenant. She was free to come and go from the unit, but I find that her responsibilities as a co-tenant continued until such time as clear, written agreement was given by the landlord, altering the tenancy agreement removing the female.

The tenants claimed that they did not receive the 10 Day Notice to End Tenancy for Unpaid Rent issued on March 4, 2013. If this is the case, and I will accept their testimony, then the tenants ended the tenancy without proper notice.

The tenants have confirmed that the unit was vacated effective May 1, 2013 with no notice given to the landlord. Therefore, pursuant to section 44(f) of the Act, I find that the tenancy ended effective the date of this hearing; May 23, 2013. The tenants were required, in accordance with section 45 of the Act, to give the landlord 1 month's written notice and they did not do so.

I find, as the tenants did not give notice to end the tenancy that the landlord was denied any opportunity to mitigate the loss, by locating new occupants; therefore, the landlord is entitled to the loss of unpaid May 2013 rent in the sum of \$801.00.

I have considered the tenant's submission that they made a full payment of March rent, against the testimony of the landlord's agent who could recall that only a partial payment had been made that month. There was no evidence before me that if the tenants had indeed made full payment in March or that they took any steps, after receiving a receipt for partial payment, to address the issue. Therefore, I find, on the balance of probabilities, that the landlord's testimony was more credible.

The landlord's agent had not heard any testimony and entered the hearing having no prior understanding that the tenants would allege he had essentially committed a fraud. The agent gave consistent and believable testimony that he had received only a partial March rent payment and I have accepted that submission. I weighed this against the fact that no further rent was paid by the tenants.

Therefore, I find that the landlord is entitled to compensation in the sum of \$422.00 for unpaid March 2013 rent.

There was no dispute that April rent remains unpaid; therefore I find that the landlord is entitled to compensation in the sum of \$772.00 for April, 2013.

There was no evidence before me that the tenant's gave notice to end the tenancy or provided the landlord with a written forwarding address. Therefore, I find that the landlord may retain the security and pet deposits in the sum of \$760.00 in partial satisfaction of the claim.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$1,285.00. 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.

Conclusion

The landlord is entitled to compensation for unpaid rent.

The landlord is entitled to retain the security and pet deposits.

The landlord is entitled to the filing fee costs.

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: May 23, 2013

Residential Tenancy Branch

