



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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 both tenants.

The tenants submit that they had been unaware of this hearing until August 19, 2013 when the landlord delivered her evidence to them. They submit that they had provided additional evidence regarding the circumstances. I reviewed the file and they had not yet been delivered to the file. I later received that evidence the same day as the hearing.

I have reviewed this additional evidence and find that any relevant issues were raised by the tenants in the hearing and much of the evidence was not relevant to the issues before me in this hearing.

During the hearing it became clear that the parties differed in the amount owed as rent. I requested that both parties provided me copies of receipts issued by the landlord for rent from the start of the tenancy. I ordered the parties to provide these to me no later than noon on August 26, 2013.

The tenants submitted copies of receipts in their original evidence package and re-faxed them as per my above order. The landlord did not provide any receipts.

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; for all or part of the security deposit

and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 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 December 16, 2012 for a month to month tenancy beginning on December 15, 2013 for the monthly rent of \$1,200.00 due on the 1st of each month and a security deposit of \$600.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on July 5, 2013 with an effective vacancy date of June 15, 2013 due to \$1,600.00 in unpaid rent.

The tenants submitted copies of rent receipts for the months of December 2013 (I have assumed this meant 2012); January, February, March, and August 2013. The tenants also included another receipt dated April 2013. However, this receipt was issued by the landlord on January 15, 2013 and the landlord testified that she printed April in error that it was supposed to be for the balance of June 2013 rent.

The landlord testified the tenants failed to pay the full rent owed for the month of June and July 2013 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent personally to the female tenant on July 5, 2013.

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 tenants submit that they had paid the rent for June in full on or about June 1, 2013. The parties agree the tenants paid the landlord \$400.00 on July 15, 2013. The tenants submit that this payment was towards July 2013 rent; the landlord submits that this payment was for the outstanding amount from June 2013.

The parties agree there remains rent outstanding for July 2013 but based on the above, the tenants assert they owe \$800.00 and the landlord asserts that the tenants owe \$1,200.00.

The tenants submit that they were unable to pay rent because the payment of utilities for the entire residential property is the tenant's responsibility and that since the new tenant moved into that rental unit she has not provided the tenants with any funds for utilities such as hydro and gas.

The tenants submit they did not pay the rent because they wanted to work this out with the landlord. The tenants submit the utilities were a lot more than they had originally thought they would be and with the increased used by the other tenant they were unable to be able to pay both rent and utilities.

The landlord seeks \$605.21 for water utilities. The landlord testified the tenants were aware of the amounts owed for the water utilities. The landlord did not provide any documentary evidence of the charges or amounts owed. The landlord indicates that until the new tenant moved into the other rental unit the tenants were responsible for 100% of the water utility and since May 15, 2013 for 60%.

The tenants also submit that they were not aware, when they signed the tenancy agreement that they would have to pay for water. The tenancy agreement does not indicate water was included in the tenancy. The tenants also submit that when they originally signed the tenancy agreement there was no notation on the tenancy agreement that water was the tenant's responsibility but that the copy the landlord provided to the tenants after signing did have a handwritten notation stating "+ water bills" in the section on the amount of rent and when rent is due.

Analysis

Despite the tenants testimony that they withheld rent because they wanted to work out with the landlord the utility payments from the basement tenant Section 26 of the *Act* requires a tenant to pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. There is no evidence before me that that the tenants had any right under the *Act* to deduct any amount of rent.

Based on the testimony of both parties I find the tenants have been served with notice to end tenancy as declared by the landlord. The notice was received by the tenants on July 5, 2013 and the effective date of the notice is amended to July 15, 2013, 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.

When a party seeks compensation for a loss is suffered the burden rests with that party to provide sufficient evidence to establish the value of that loss. When both parties provide testimony of their understanding of the amount of the debt, it is incumbent on the party who has the burden to provide corroborating evidence to establish the value.

As I have no evidence before me from the landlord confirming her claim that the tenants owe any amount for June 2013 rent, I find, based on the tenant's testimony and rent receipts that the tenants owe the landlord rent in the amount of \$800.00 for July 2013, only.

However, as the tenants have provided testimony that they have not been able to collect any utility monies from the tenant in the basement rental unit for hydro and gas, I order that landlord must provide reimbursement to the tenants for any amounts owed by the tenant in the basement unit. If the parties cannot reach agreement on amounts or the landlord fails to provide the tenants with reimbursement the tenants are at liberty to file a new Application for Dispute Resolution seeking a monetary order against the landlord.

In regard to the landlord's claim for water utilities, I accept that the tenancy agreement does not indicate that water is included in the tenancy. However because water seems to be the only utility that the tenants did not have to put in their own name I find it was reasonable that the landlord should have provided specific clarity, prior to entering into the tenancy, that the tenants would be responsible for water.

I find that the landlord's additional notation on the tenant's copy of the tenancy agreement shows an additional clause that was not present when the tenant's signed the agreement and is therefore not an enforceable term of the tenancy agreement.

Under these circumstances I find the landlord has failed to ensure that the term for water utilities was sufficiently clear and pursuant to Section 6(3)(c) I find the term unenforceable. In addition, the landlord failed to provide any copies of water bills to establish the value of any of this claim.

For these reasons I find the landlord has failed to provide sufficient evidence that the tenants are responsible for water utility charges and I dismiss this portion of her Application.

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 in the amount of **\$825.00** comprised of \$800.00 rent owed and \$25.00 of the \$50.00 fee paid by the landlord for this application as she was only partially successful.

I order the landlord may deduct the security deposit and interest held in the amount of \$600.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$200.00**.

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: August 27, 2013

Residential Tenancy Branch

