



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MND, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation damage to the unit site or property and to recover the filing fee for this proceeding.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the “hearing package”) by posting the hearing package on the door of the Tenants’ rental unit on August 29, 21013. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is there damage to the unit site or property and if so how much?
5. Is the Landlord entitled to compensation for damage and if so how much?

Background and Evidence

This tenancy started on October 1, 2012 as a month to month tenancy. Rent is \$1,500.00 per month payable in advance of the 1st day of each month. The Tenant did not pay a security deposit. Both the Tenant and the Landlord agreed no tenancy agreement was written and no condition inspection report was completed at the start of the tenancy.

The Landlord said that the Tenant did not pay \$100.00 of rent for April, 2013 and the Tenant has been repeatedly late with other rent payments, as well as significantly damaging the rental unit, so the Landlord posted a 1 Month Notice to End Tenancy dated June 20, 2013 on the door of the Tenant's rental unit on June 24, 2013. The Landlord said the Tenant has unpaid rent for July, 2013 of \$1,500.00 and unpaid rent of \$200.00 for September, 2013.

The Landlord said he did not submit any corroborating evidence to prove the unpaid rent or late payments as he did not realized he had to do so. As well the Landlord said the damages have not been repaired as of yet and the monetary claim of \$2,000.00 is only an estimate to repair the damages to the unit.

The Landlord further indicated that the Tenants are living at the rental unit and the Landlord requested an Order of Possession for as soon as possible.

The Tenant said that there is no unpaid rent at this time and the Tenant agreed he has been late with the rent payment 3 or 4 times. The Tenant said he did not send in any evidence to support his claim that the rent has been paid. The Tenant continued to say that he puts cash deposits into the Landlord's bank account each month to make the mortgage payments. The Landlord said he has been charged a late mortgage payment fee 2 times in the amount of \$200.00 each time, which he has included in the application. The mortgage is to be paid on the 1st of each month. The Tenant continued to say that he has an agreement with the Landlord in writing that he can stay in the house until March, 2014 as part of his medical marijuana growing license.

The Tenant said he is in a wheel chair and it would be very difficult for them to move so he wants to continue the tenancy.

The Landlord said he wants to end the tenancy as soon as possible.

Analysis

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.

As the Landlord has not provided any corroborative evidence to support his monetary claims of unpaid rent, late mortgage payment fines and since the damage claim to the rental unit is not a proven loss at this time I find the Landlord has not proven he has incurred a loss at this time. Consequently I dismiss with leave to reapply the Landlord's monetary claims for unpaid rent, to recover the late mortgage payment fees and the estimated damages of \$2,000.00 to the rental unit based on a lack of evidence.

Policy Guideline 38: Repeatedly Late Rent Payments

The *Residential Tenancy Act*¹ and the *Manufactured Home Park Tenancy Act*² both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late

As the Tenant testified that he has been late with 3 or 4 rent payments and the Landlord’s reason on the 1 Month Notice to End Tenancy for Cause is repeatedly late rent payments; I find that the Tenant’s testimony has established grounds to support the Landlord’s request to end the tenancy in the 1 Month Notice to End Tenancy for Cause dated June 20, 2013. I find for the Landlord and pursuant to section 47 (b) of the Act I award the Landlord an Order of Possession effective 2 days after service of the Order on the Tenants.

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

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants has been issued to the Landlord. 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 Landlord’s monetary claims are 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*.

Dated: October 08, 2013

Residential Tenancy Branch

