



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MND MNR MNSD MNDC FF

Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.3, states that in the course of the dispute resolution proceeding, if the Arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Landlords' application I have determined that I will not deal with all the dispute issues placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy and non-payment of rent. Therefore, I will hear matters pertaining to their request for an Order of Possession and non payment of rent. The remaining items are hereby dismissed, with leave to re-apply.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on September 3, 2013, by the Landlords to obtain an Order of Possession for cause and a Monetary Order for: 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 Landlords provided affirmed testimony that they served each Tenant, in person, with copies of the Landlords' application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on September 5, 2013. Based on the submissions of the Landlords I find that each Tenant was sufficiently served notice of this teleconference proceeding and I continued in the Tenants' absence.

Issue(s) to be Decided

Are the Landlords entitled to a Monetary Order?

Should the Landlords be granted an Order of Possession?

Background and Evidence

The Landlords submitted evidence which indicated the Tenants entered into a written month to month tenancy agreement that began on April 1, 2010. Rent is payable on or before the first of each month and began at \$600.00 per month. The rent was increased on October 1, 2012 to \$625.00 and a notice of rent increase was served upon the Tenants in June 2013, to raise the rent to \$650.00 effective October 1, 2013.

The Landlords testified that they served the Tenants with a 1 Month Notice for cause when they placed the Notice in the Tenants' mailbox on July 8, 2013. The Notice listed the following reasons:

- *Tenant or a person permitted on the property by the tenant has:*
 - Significantly interfered with or unreasonable disturbed another occupant or the landlord
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - Put the Landlord's property at significant risk
- *Tenant has caused extraordinary damage to the unit/site or property/park*
- *Tenant has not done required repairs of damage to the unit/site*

The Landlords stated that the damages are the main reason why they want to evict the Tenants. They pointed to the photos provided in their evidence which supported that the Tenants have removed two doors, put holes in numerous walls, broke the cupboard door, broke the cupboard drawer, and damaged the wall by the front door.

The Landlords indicated that they expected the Tenants to move out in August 2013, based on the Notice; however, they continue to live there. The Tenant's did not apply to cancel the notice until sometime in September claiming that the Landlords gave them permission to stay until the end of September. The Landlords stated that they made so such arrangement. They also indicated that they have a hearing scheduled for October 10, 2013, to hear matters pertaining to the Tenants' application to seek repairs and to cancel the Notice issued July 8, 2013.

The Landlords stated that they were also seeking a monetary order to claim for the unpaid rent. They indicated that rent of \$312.50 is paid by the Ministry of Social Development for one of the Tenants and the other Tenant pays them directly. As of today's date there is a balance owing of \$650.00 which is comprised of:

September Rent \$625.00 - \$312.50 payment =	\$312.50
October Rent \$650.00 - \$312.50 payment =	<u>\$337.50</u>
Total Rent Due	<u>\$650.00</u>

Analysis

Upon review of the 1 Month Notice to End Tenancy I find that it was served upon the Tenants in a manner that complies with section 89 of the Act.

Section 53(2) of the Act provides that incorrect effective dates of Notices to End Tenancy are automatically changed to the earliest date that complies with the Act. Therefore, in this case the 1 Month Notice to End Tenancy that was issued on July 8, 2013, would have an effective date of **August 31, 2013**.

The Notice was issued pursuant to Section 47(1) of the Act for the following reasons:

- *Tenant or a person permitted on the property by the tenant has:*
 - Significantly interfered with or unreasonable disturbed another occupant or the landlord
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - Put the Landlord's property at significant risk
- *Tenant has caused extraordinary damage to the unit/site or property/park*
- *Tenant has not done required repairs of damage to the unit/site*

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

Given the evidence before me, in the absence of any evidence from the Tenants who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlords and corroborated by their evidence. Accordingly, I find the Landlords have met the burden of proof to end this tenancy for cause and I grant them an Order of Possession.

As noted above this tenancy ended **August 31, 2013**, in accordance with the 1 Month Notice. Therefore I find the Landlords are seeking money for use and occupancy for the balance owing for September and October 2013, not rent. The Tenants are still occupying the unit which means the Landlords will not regain possession until after service of the Order of Possession and they will have to work to repair the unit and find replacement tenants. Therefore, I find the Landlords are entitled to use and occupancy

and any loss of rent for the entire months of September and October 2013, in the amount of **\$650.00**.

The Landlords have been successful with their application; therefore I award recovery of the **\$50.00** filing fee

Conclusion

I HEREBY FIND the Landlords are entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenants.

The Landlords have been awarded a Monetary Order in the amount of **\$700.00** (\$650.00 + \$50.00). 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: October 04, 2013

Residential Tenancy Branch

