



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kelson Group
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, MNR, MNSD, FF
OLC

Introduction

This hearing concerns 2 applications: i) by the landlords for an order of possession / a monetary order as compensation for unpaid rent / retention of the security deposit & pet damage deposit / and recovery of the filing fee; and ii) by the tenants for an order instructing the landlords to comply with the Act, Regulation or tenancy agreement. Both parties attended and / or were represented and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Tenant "MG" is tenant "CJTB's" grandmother. While tenant "MG" is named on the tenancy agreement, only tenant "CJTB" has resided in the unit. It was tenant "MG's" intent to assist tenant "CJTB," her grand daughter, by providing payment of rent for a limited period of time.

Pursuant to a written tenancy agreement, the original term of tenancy is from June 1 to November 30, 2013, after which time the agreement provides that tenancy will continue on a month-to-month basis. Despite the foregoing, tenant "CJTB" took early possession of the unit on May 10, 2013. Tenant "MG" provided 6 post-dated rent cheques which covered rent for May, June, July, August, September & October. A post-dated rent cheque was not provided for November, shown on the tenancy agreement as the final month of the original 6 month term of tenancy.

Monthly rent of \$875.00 is due and payable in advance on the first day of each month. A security deposit of \$437.50 and a pet damage deposit of \$200.00 were both collected.

Arising from rent which was unpaid when due on November 1, 2013, the landlords issued a 10 day notice to end tenancy for unpaid rent dated November 4, 2013. The notice was served in-person on the tenant on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is November 15, 2013. Subsequently, the tenants have made no further payment toward rent and tenant "CJTB" continues to have possession of the unit.

In her application, tenant "CJTB" claims that the landlords insisted that she vacate the unit by the end of October 2013, despite the provision in the tenancy agreement that tenancy ends November 30, 2013.

The tenants filed an application for dispute resolution on October 30, 2013. The landlords' application for dispute resolution was filed on November 26, 2013.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated November 4, 2013. The tenants did not pay the outstanding rent within 5 days of receiving the notice, and while they filed an application for dispute resolution on October 30, 2013, the application was not subsequently amended to include an application to cancel the 10 day notice.

I find that whatever misunderstandings may have arisen in communications between tenant "CJTB" and landlord's agent, "DS," the fact remains that rent was not paid when due for November on November 1, 2013, rent was not paid for November within 5 days after the landlords' service of the 10 day notice dated November 4, 2013, and no rent whatsoever has been paid for December 2013. In summary, the tenants are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlords have established entitlement to an **order of possession**.

As for compensation, I find that the landlords have established a claim of **\$1,800.00**:

\$875.00: *unpaid rent for November*

\$875.00: *unpaid rent / loss of rental income for December*

\$50.00: *filing fee*

I order that the landlords retain the security deposit of \$437.50 and the pet damage deposit of \$200.00 [**total: \$637.50**], and I grant the landlords a **monetary order** under section 67 of the Act for the balance owed of **\$1,162.50** (\$1,800.00 - \$637.50).

Conclusion

The tenants' application for an order instructing the landlords to comply with the Act, Regulation or tenancy agreement is hereby dismissed.

I hereby issue an **order of possession** in favour of the landlords effective not later than **two (2) days** after service on the tenants. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$1,162.50**. Should it be necessary, this order may be served on the tenants, filed in the 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: December 11, 2013

Residential Tenancy Branch

