



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MT CNL FF
OPR MNR MNSD MNDC FF

Preliminary Issues

Upon review of the Landlords' application for dispute resolution and their evidence I find the Tenant was properly informed of the Landlord's intent of seeking money owed or compensation for damage or loss under the act regulation or tenancy agreement, for money owed for February 2014 occupancy as the Landlord wrote in the Details of the Dispute "*DID NOT PAY RENT FOR JAN & FEB*"

Based on the aforementioned I find the Landlords made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* and he selected the box to claim *unpaid rent* instead. Therefore I amend the application to include a request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed on February 14, 2014, seeking an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; money owed or compensation for damage or loss under the act regulation or tenancy agreement; to keep all of the security deposit; and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed on January 09, 2014, seeking more time to make their application; an Order to cancel the notice to end tenancy for landlord's use; and to recover the cost of the filing fee from the Landlords for this application.

The Landlord provided affirmed testimony that the Tenant G.S. was personally served with copies of the Landlord's Application for Dispute Resolution and Notice of dispute resolution hearing on February 17, 2014, at approximately 6:30 p.m. The female Tenant, R.J. was not served because she had already vacated the property by mid February 2014.

Section 88(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The

Landlords have applied for a monetary Order which requires that the Landlords serve **each** respondent as set out under *Residential Tenancy Rules of Procedures*.

In this case only one of the two Tenants has been personally served with application for dispute resolution and Notice of dispute resolution hearing. Therefore, I find that the request for a monetary Order against both Tenants must be amended to include only the male Tenant, G.S., who has been properly served with Notice of this Proceeding. As the second Tenant R.J. has not been properly served the Application for Dispute Resolution as required, the monetary claim against the Tenant R.J. is dismissed without leave to reapply.

No one appeared on behalf of the Tenant, G.S., despite the Tenant being served with notice of the Landlord's application in accordance with the Act and despite the Tenants having their own application for dispute resolution scheduled for the same hearing date and time. Accordingly, I proceeded in the absence of the Tenants.

Issue(s) to be Decided

1. Should the Tenants' application be dismissed with or without leave to reapply?
2. Should the Landlord be granted an Order of Possession, pursuant to section 55 of the *Residential Tenancy Act*?
3. Should the Landlord be granted a Monetary Order, pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord submitted that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on September 1, 2011, and switched to a month to month tenancy after August 31, 2012. The Tenants were required to pay rent of \$1,650.00 on the first of each month and on August 14, 2011 the Tenants paid \$825.00 as the security deposit.

The Landlord testified that on November 30, 2013, he spoke with the Tenant R.J. and informed her that he would be serving them a 2 Month Notice to end tenancy for landlord's use because the property had been sold. He posted the Notice to the Door and received an e-mail from R.J. confirming receipt of the 2 Month Notice that same day, November 30, 2013. Then on December 26, 2013 he attended the unit and spoke with the male Tenant G.S. He claimed that he was waiting to be personally served with another copy of the 2 Month Notice; so on December 30, 2013 the Landlord served G.S. a second copy of the Notice.

The Landlord stated that the sale was supposed to complete on February 15, 2014, but when the Tenants failed to vacate the property and failed to pay money for February 2014, he was able to negotiate an extension for the closing of the sale to February 28, 2014. On February 2, 2014 he served the Tenants a 10 Day Notice for unpaid rent in the following three ways to cover his bases: (1) personally handed to a female Adult who resides at the unit; (2) posted a copy on the rental unit door; and (3) e-mailed a copy to the Tenants.

The Landlord confirmed the Tenants were entitled to compensation equal to one month's rent for being served the 2 Month Notice and that free month's rent would apply to January 2014 rent. Therefore, he was seeking use and occupancy payments for February 2014 and an Order of Possession for as soon as possible.

There was no additional evidence or testimony provided in support of the Tenants' claim as no one attended the scheduled teleconference hearing on behalf of the Tenants.

Analysis

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 and despite this hearing being scheduled to hear matters pertaining to their own application, I accept the undisputed version of events as discussed by the Landlord and corroborated by their evidence.

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

While the Respondent Landlord attended the hearing by way of conference call, the Applicant Tenants did not.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the applicant Tenants, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the applicant Tenants called into the hearing during this time.

Accordingly, in the absence of any evidence or submissions from the applicant Tenants, I order the Tenants' application dismissed without liberty to reapply.

Upon review of the facts pertaining to the 2 Month Notice and the 10 Day Notice to End Tenancy, I find the Notices to be completed in accordance with the requirements of the Act and I find that they were served upon the Tenants in a manner that complies with the Act. The effective date of the 2 Month Notice was **January 31, 2014**. Upon consideration of all the evidence presented to me, I find the Landlords had valid reasons for issuing the Notices.

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing. In the absence of the applicant

Tenants, the telephone line remained open while the phone system was monitored for thirteen minutes and no one on behalf of the applicant Tenants called into the hearing during this time. Based on the aforementioned I find that the Tenants have failed to present the merits of their application and the application is dismissed.

Section 55 of the Act provides that an Order of Possession **must** be provided to a landlord if a tenant's request to dispute a Notice to End Tenancy is dismissed and the landlord makes an oral request for an Order of Possession during the scheduled hearing. Accordingly, I hereby grant the Landlords an Order of Possession.

As noted above this tenancy ended on **January 31, 2014**; in accordance with the 2 Month Notice. Therefore I find the Landlord is seeking money for use and occupancy for February, 2014, not rent. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month February, 2014, in the amount of **\$1,650.00**.

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

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Use and Occupancy February 2014	\$1,650.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,700.00
LESS: Security Deposit \$825.00 + Interest 0.00	<u>-825.00</u>
Offset amount due to the Landlord	<u>\$ 875.00</u>

Conclusion

I HEREBY DISMISS the Tenants' application, without leave to reapply.

I HEREBY FIND that the Landlords are entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenant.

I HEREBY Amend the Monetary Order to include only the male Tenant, G.S., who has been properly served with Notice of this Proceeding. The monetary claim against R.J. is dismissed, without leave to reapply.

The Landlord has been awarded a Monetary Order in the amount of **\$875.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does 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 *Manufactured Home Park Tenancy Act*.

Dated: February 24, 2014

Residential Tenancy Branch

