



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Weidner Investment Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the tenant: CNR, MNDC, OLC, RPP
For the landlord: OPR, OPB, MNR, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”), a monetary order for money owed or compensation for damage or loss, for an order requiring the landlord to comply with the Act, and an order requiring the landlord to return the tenants’ personal possessions.

The landlord applied an order of possession for the rental unit due to unpaid rent, an order of possession due to an alleged breach by the tenant of an agreement with the landlord, a monetary order for unpaid rent, and for recovery of the filing fee.

Both parties attended the telephone conference call hearing, although the tenants did not dial into the hearing immediately. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter all parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me and respond to the other’s evidence.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter- Although the tenants marked their application as though they were seeking a monetary order, they failed to request any amount. I have therefore amended their application to exclude their request.

Issue(s) to be Decided

1. Are the tenants entitled to an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent, for an order requiring the landlord to return the tenants' personal property and to comply with the Act, and monetary compensation?
2. Is the landlord entitled to an order of possession for the rental unit due to unpaid rent or for breach of an agreement, a monetary order for unpaid rent, and to recover the filing fee?

Background and Evidence

The undisputed evidence is that this 6 month, fixed term tenancy began on November 5, 2013, monthly rent is \$1225, due on the first day of the month, and that tenants paid a security deposit of \$587.50.

Landlord's application-

The landlord's monetary claim is \$5581.42; however, the landlord did not provide a detailed calculation as required by section 59(2)(b) of the Act. In testimony, the landlord explained that their request is for unpaid rent for December 2013, and January, February, 2014, and loss of rent revenue for March and April 2014, which is the end of the fixed term mentioned in the tenancy agreement. The landlord supplied a copy of the tenancy agreement.

The landlord submitted that the tenants failed to pay rent for December and were issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on December 3, 2013, listing unpaid rent of \$1243.92. After the cheque was returned, the landlord issued another Notice, on December 20, 2013, listing unpaid rent of \$1293.92.

The landlord further submitted that rent was not paid on January 1, 2014, leading to the landlord issuing another Notice on January 3, 2014, listing unpaid rent of \$1319.92.

The landlord supplied copies of the three Notices.

On January 7, 2014, the landlord issued the tenants a document entitled a "24 Hour To Enter Premises-Can." This notice, posted on January 7, informed the tenants that the landlord intended to enter the rental unit the next day between the hours of 9:00 a.m. and 5:00 p.m. The notice also informed the tenants that the locks would be changed on the inspection date if the outstanding rent was not paid by "5 pm January 7, 2014." This notice was supplied by the landlord.

The landlord testified that the locks to the rental unit were changed on January 8, 2014.

In response to my question as the amount of unpaid rent through January 8, 2014, the landlord refused to answer, stating the unpaid rent for December and January was \$2443.92.

In response, the tenant submitted that she received the December Notice on December 24, 2013 and called the office of the landlord to explain their financial situation. The tenant submitted that she informed the landlord that the rent would be paid in January.

The tenant submitted that when they got paid on January 9, 2014, they offered to pay \$1300, but the landlord refused as they wanted the full amount.

Tenants' application-

As to the tenants' request for an order seeking cancellation of the 10 Day Notice and an order seeking the landlord's compliance with the Act, the tenants testified that they now would just like to be able to enter the rental unit to collect their personal property and possessions, as they have been denied entry since January 8, 2014.

In response to my question, the landlord said the tenants could phone the office to make an appointment to collect their personal property, so long as a landlord's representative was with them and the tenants made a rent payment.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Landlord's application-

A tenancy remains in effect until such time it ends under section 44 of the Act. In order for the landlord to have ended the tenancy for unpaid rent, the landlord would have had

to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as was the case here, and allow the tenant the opportunity to pay the outstanding rent five days after receiving such a Notice.

If the tenant then fails to pay the rent or vacate, the landlord may apply to the Residential Tenancy Branch ("RTB") for an order of possession for the rental unit, which is enforceable in the Supreme Court of British Columbia. Although the landlord through their application sought such order of possession for the rental unit, they failed to wait for the dispute resolution hearing, and instead illegally changed the locks to the rental unit, in violation of section 31(1) of the Act, preventing the tenants from having any further access to the rental unit.

Since the landlord has violated the Act and illegally regained possession before they were entitled, I find the landlord ended the tenancy as of January 8, 2014, and the landlord is now precluded from claiming loss of rent or rent revenue from January 8, 2014 until the end of the fixed term as claimed.

I further find that the tenants owed rent for December 2013, and failed to pay. I therefore award the landlord monetary compensation of \$1293.92 in unpaid rent as listed on the 10 Day Notice issued on December 20, 2013.

I also award the landlord monetary compensation for unpaid rent for January 1-7, 2014, in the amount of \$281.89 ($\$1225 \text{ monthly rent} \times 12 \text{ months} = \$14,700 \text{ yearly rent} \div 365 \text{ days} = \$40.27 \text{ daily rent} \times 7 \text{ days}$)

Due to the above, the landlord is granted a monetary award of \$1575.81 for unpaid rent for December 2013 and January 1-7, 2014.

I decline to award the landlord recovery of the filing fee due their actions in illegally changing the locks to the rental unit.

Tenants' application-

In the circumstances before me, the tenant no longer requests possession of the rental unit or cancellation of the 1 Month Notice.

As noted above, I find the landlord took possession of the rental unit illegally and their actions and evidence show they are holding the tenants' possession as ransom for payment. I find the landlord's actions not only violated the requirements of the Act but are egregious.

I therefore order the landlord to return the tenants' property to the tenants at the date and time specified by the tenants but no later than March 19, 2014, and at no cost to the tenants. The landlord must take all necessary steps to have the tenants' possessions made available to the tenants prior to the date and time the possessions are to be retrieved by the tenant. This includes, but is not limited to, ensuring the tenants are provided with a means to gain access to the rental unit (i.e., keys or access codes) if necessary.

The tenants have not requested monetary compensation in this application and I cannot award the tenants monetary compensation with this Decision. However, the tenants are at liberty to make a subsequent application for monetary compensation against the landlord for any damages or loss suffered by the tenants due to the landlord's actions.

In addition to losses the tenant may have already suffered, the landlord is hereby informed that the landlord's failure to return the tenants' property as ordered may entitle the tenants to additional compensation. The Act provides for monetary compensation up to \$25,000.00 for pecuniary losses (e.g.: loss of property, etc.) and non-pecuniary damages (e.g.: suffering, grief, mental distress, etc.) and aggravated damages, as explained in Residential Tenancy Policy Guideline 16: *Claims in Damages*.

Conclusion

The landlord's application has been granted in part as I have granted them a monetary award of \$1575.81 for unpaid rent for December 2013 and January 1-7, 2014.

At the landlord's request, I direct them to retain the tenants' security deposit of \$587.50 in partial satisfaction of their monetary award, and I grant the landlord a final, legally binding monetary order for the balance due pursuant to section 67 of the Act in the amount of \$988.31, which I have enclosed with the landlord's Decision.

The monetary order must be served upon the tenants and filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court as necessary. The tenants are advised that costs of such enforcement are recoverable from the tenants.

As to the tenants' application, the landlord is ordered to return the tenants' personal property on the date and time specified by the tenant and at no cost to the tenant.

The tenants retain the right to make a subsequent application for monetary compensation against the landlord.

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: March 11, 2014

Residential Tenancy Branch

