



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlords' application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlords applied for an order of possession for the rental unit due to alleged cause and for unpaid rent, monetary compensation, and for recovery of the filing fee.

The landlords attended the hearing; the tenants did not appear.

The landlord supplied evidence that they served each tenant with their Application for Dispute Resolution and Notice of Hearing by registered mail to the tenants' home address on February 11, 2014. The landlord supplied the customer receipt showing the tracking number and testified that the tenants signed for the registered mail.

Based upon the submissions of the landlords, I find the tenants were served notice of this hearing and the landlords' application in a manner complying with section 89(1) of the Residential Tenancy Act and the hearing proceeded in the tenants' absence.

The landlord was provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing.

I have reviewed all oral and written evidence 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.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to alleged cause, monetary compensation, and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy began on December 20, 2013, monthly rent is \$750, payable on the 1st day of the month, and the tenants paid a security deposit of \$375.

The landlord submitted evidence that they served the tenants with a 1 Month Notice to End Tenancy for Cause on January 21, 2014, by leaving it with the tenants, listing an effective end of tenancy of February 21, 2014.

A notice to end the tenancy is not effective earlier than one month after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before the next rent payment is due is required in giving notice to end the tenancy. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to February 28, 2014.

The Notice explained that the tenants had ten (10) days to file an application for dispute resolution at the Residential Tenancy Branch ("RTB") in dispute of the Notice. It also explains that if the tenants did not file an application to dispute the Notice within ten days, then the tenants are conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice.

The landlords also supplied evidence that they served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, on February 1, 2014, listing unpaid rent of \$750. When the 10 Day Notice was delivered to the tenants on February 1, 2014, the monthly rent for February was not yet due. The tenants, nevertheless, have not paid any rent since the issuance of the 10 Day Notice, and now owe rent for the month of March.

I have no evidence before me that the tenants filed an application to dispute either the 1 Month Notice or the 10 Day Notice.

The landlords' monetary claim in their application was \$1125, comprised of unpaid rent for February in the amount of \$750 and \$375 for the security deposit.

In explanation, the landlords submitted that the male tenant kicked in the front door in the rental unit, causing damage.

The landlords requested in the hearing to amend their application to include a claim for loss of rent for March, as the tenants remain in the rental unit and have not paid rent. I have accepted the landlords' request for an amendment.

The landlords' relevant documentary evidence included the written tenancy agreement and the 2 Notices.

Analysis

Based upon the undisputed evidence of the landlords, I find the tenants were served a 1 Month Notice to End Tenancy for Cause, did not apply to dispute the Notice within ten days of service and are therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I therefore find that the landlords are entitled to an order of possession for the rental unit effective two days after service of the order upon the tenants.

Based upon the undisputed evidence of the landlords, I also find that the tenants owed rent for the months of February and March 2014, pursuant to the tenancy agreement and the Act, in the amount of \$750 each month, and failed to pay.

I therefore find the landlords are entitled to a monetary award of \$1500, for unpaid rent through March 2014.

I advise the landlords that I have not accepted their monetary claim for damage to the rental unit, as the tenancy has not yet ended; as such, the tenants may make any repairs to the rental unit damage caused by them and for which they may responsible, as they are allowed.

As the landlords' claim for damage is premature at this point, I dismiss the claim for damage, with leave to reapply.

Due to the above, I find the landlord is entitled to a total monetary award of \$1550, comprised of unpaid rent of \$1500 and the filing fee of \$50.

Conclusion

The landlords' application has been granted in part.

I grant the landlords a final, legally binding order of possession for the rental unit, which is enclosed with the landlords' Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

I have granted the landlords a monetary award in the amount of \$1550.

At the landlords' request, I direct them to retain the tenants' security deposit of \$375 in partial satisfaction of their monetary award of \$1550 and I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$1175, which I have enclosed with the landlords' Decision.

Should the tenants fail to pay the landlords this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

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* and is being mailed to both the applicants and the respondents.

Dated: March 28, 2014

Residential Tenancy Branch

