



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: OPR, MNR, FF
For the tenant: CNR, MNSD, OPT, RR, MNDC, MNR, AAT

Introduction

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

The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent, for authority to retain the tenants’ security deposit, and for recovery of the filing fee.

The tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), a monetary order for a return of their security deposit, order of possession for the rental unit, for an order allowing a reduction in rent, a monetary order for money owed or compensation for damage or loss, a monetary order for the cost of emergency repairs, and an order requiring the landlord to allow access to the rental unit.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, respond to the other’s evidence, and make submissions to me.

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 #1-I have determined that the portion of the tenants’ application dealing with monetary issues and other orders is unrelated to the primary issue of disputing the Notice and whether this tenancy will continue. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed this portion of the tenants’ Application, and a finding is made on the disposition later in this Decision.

I must note, however, that the tenants stated that there was an error made by the government agent’s office when filing their application, as they were now scheduled a

separate hearing on their application for monetary compensation, as they were informed the tenants' application for this issue was filed too late.

Preliminary matter #2- At the beginning of the hearing, the evidence was discussed and the tenant denied receiving some of the landlord's documentary evidence. I made the decision to proceed with the hearing, as the portion of the landlord's evidence the tenants denied receiving ultimately had no impact on this Decision.

Preliminary matter #3- As to the portion of the landlord's application for monetary compensation consisting of unpaid rent, the landlord failed to include a monetary breakdown or any other details of her claim. Further, the landlord's monetary claim of \$4600 does not match the amount listed in her Notice and what would be alleged unpaid rent when her application was made.

I have refused the portion of the landlord's application seeking monetary compensation, pursuant to section 59(5)(c) of the Residential Tenancy Act because her application for dispute resolution did not provide sufficient particulars of her claim for compensation, as is required by section 59(2)(b) of the Act.

The landlord is at liberty to re-apply for her monetary claims as a result, but is reminded to include full particulars of her monetary claim when submitting her application, and is encouraged to use the "Monetary Worksheet" form located on the Residential Tenancy Branch website, www.rto.gov.bc.ca. The landlord may include any additional pages to set out the details of the dispute in her application, as required.

The hearing proceeded only upon and dealt only the landlord's application seeking an order of possession for the rental unit and with the tenants' application seeking cancellation a 10 Day Notice, as noted in the preliminary matters.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent and to recover the filing fee?

Are the tenants entitled to an order cancelling the Notice?

Background and Evidence

A written tenancy agreement was not provided into evidence. The landlord submitted that the tenants refused to sign the document.

The landlord stated that the tenancy started on August 10, 2013, monthly rent is \$2100, and that the tenants paid a security deposit of \$1050 at the beginning of the tenancy.

Tenant DM submitted that the tenancy started at the end of September 2013, due to the condition of the rental unit. The tenants would not agree that monthly rent was \$2100, due to the landlord agreeing to reduce the rent for emergency repairs.

Landlord's application-

The landlord stated that she served tenant GF a 10 Day Notice to End Tenancy for Unpaid Rent on April 22, 2014 by leaving it with him, listing unpaid rent of \$3150 as of April 1, 2014. The effective move-out date listed was May 2, 2014.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end.

In response to my question to GF, he acknowledged receiving the Notice on April 22, 2014.

The landlord asserted that since the issuance of the Notice, no rent payments have been received from or on behalf of the tenants.

In response to my question as to whether the landlord provided accounting records to show the tenants' payments and monthly rent due, such as with a tenant ledger sheet, the landlord said she did not understand the question.

Tenants' response-

The tenants claimed that the landlord had been paid rent through payments from government agencies and that she cancelled the payments herself for the June rent.

The denied owing the amount of rent as claimed by the landlord, due to the aforesaid agreement the parties had about emergency repairs. The tenant did not state what she believed the monthly rent would be.

As the records show that the tenants' application was not filed until June 2, 2014, I made inquiries of the tenants.

In response to my questions, tenant DM denied receiving the landlord's Notice on April 22, 2014, and said that GF, when he acknowledged receiving the Notice on that date, did not understand the question.

GF then testified again, and recanted his earlier testimony, saying he did not receive the Notice on April 22, 2014.

Tenant DM also recanted her testimony as to the date the tenancy started, claiming that the tenants did not take possession of the rental unit until January 2014, due to the condition of the rental unit.

Tenant DM claimed that their application to dispute the Notice was timely filed; however, there were errors made with the government agent's office. I note that the file and RTB records showed that the tenants' application was filed on June 2, 2014, and that corrections were necessary, due to incomplete information.

I must also note that the tenants failed to mark on their application requesting an order granting more time to make an application to cancel a notice to end tenancy the date they received the Notice, as required.

Analysis

Landlord's Application:

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent, pursuant to section 46 of the Act. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days.

As to the date the Notice was served, I could not rely upon the tenants' contradictory oral evidence, stating early in the hearing that GF received the Notice on that date and later in the hearing, denying that GF received the Notice on that date. I also find the tenants' application to be deficient as to the date they received the Notice, and therefore I could not consider their request for more time to file their application.

I therefore find that the landlord submitted sufficient evidence to prove that the tenants were served with the 10 Day Notice on April 22, 2014.

The tenants therefore had until April 27, 2014, to pay the rent listed on the Notice or to file their application to dispute the Notice; however, the records show the tenants did not file their application until on or about June 2, 2014.

As the tenants failed to pay the rent listed on the Notice, as this matter was not in dispute, I find the tenants were conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective 2 days after service upon the tenants.

I also allow the landlord to recover the filing fee of \$50, and I allow her to withhold the amount of \$50 from the tenants' security deposit for this amount. Alternatively, I grant the landlord a monetary order in the amount.

Tenants' application:

Due to the above, the tenant's application for dispute resolution seeking a cancellation of the Notice is dismissed without leave to reapply as I find the 10 Day Notice to End

Tenancy issued by the landlord has been supported by the landlord and is therefore valid and enforceable.

Conclusion

The portion of the landlord's application for an order of possession for the rental unit and for recovery of the filing fee has been granted.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order after it has been served upon them, this 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.

The portion of the landlord's application seeking monetary compensation is dismissed, with leave to reapply.

The portion of the tenants' application seeking cancellation of the landlord's Notice is dismissed, without leave to reapply.

The portion of the tenants' application dealing with monetary issues, which was severed, is dismissed, with leave to reapply, with the understanding that the tenants have another hearing already scheduled to deal with their monetary claims. It is not known if the monetary issues are related to the monetary issues in their present application.

The portion of the tenants' application seeking an order of possession for the rental unit, an order requiring the landlord to allow access to the rental unit, and for an order allowing a reduction in rent is dismissed without leave to reapply as I have granted the landlord an order of possession for the rental unit and therefore the tenancy is ending.

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: June 20, 2014

Residential Tenancy Branch

