



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, CNR, CNC, OLC, MNSD, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for unpaid rent and cause, a monetary Order for unpaid rent and damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenants applied to cancel two 2 month Notices to end tenancy for cause, to cancel a 10 day Notice to end Tenancy for unpaid rent, an Order the landlord comply with the Act and to recover the filing fee costs from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The parties confirmed receipt of all evidence each had submitted.

The parties agreed that a 2 month Notice to end tenancy for landlord's use issued on January 31, 2014, supplied as evidence by the tenants, was of no force. The tenants did not dispute that Notice and it had been withdrawn by the landlord.

At the start of the hearing the tenants asked for an adjournment. The tenants wished to amend their application to add a claim for aggravated damages and to obtain a police report. The tenants had initially applied on May 21, 2014; the application was amended on May 23 and again on June 2, 2014. The tenants said they were given incorrect information on the last possible day a further amendment could be made.

I considered section 6.4 of the Residential Tenancy Branch Rules of Procedure and determined the landlord would be prejudiced by any adjournment. The tenants were told that any claim for compensation would be severed from the application requesting a Notice be set aside. The tenants were at liberty to provide oral testimony in relation to any police contact that might have been outlined in a report.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent or cause?

Is the landlord entitled to a monetary Order for unpaid rent in the sum of \$4,800.00?

May the landlord retain the security deposit and pet deposit paid by the tenants?

Should the Notices ending tenancy be cancelled?

Should the landlord be Ordered to comply with the Act?

Background and Evidence

The tenancy commenced on June 8, 2008; rent is currently \$1,600.00 per month. A security and pet deposit were paid in the sum of \$800.00 plus \$350.00 respectively.

There was no dispute that on June 2, 2014, a 10 day Notice ending tenancy for unpaid rent, which had an effective date of June 12, 2014 was served by posting to the tenant's door. On June 5, 2014 the tenants amended their application, to dispute that Notice.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,600.00 within 5 days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within 5 days.

The tenants confirmed that they have not paid June or July rent; they waited to see what the outcome of this hearing would be. The tenants also agreed they failed to pay March 2014 rent. The 2 month Notice issued for landlord's use was related to a possible purchase of the rental unit by a relative of the tenant's. The tenants did not pay rent that month, as compensation provided when a 2 month Notice ending the tenancy issued. However, the tenants did not vacate the unit and both parties have agreed that Notice was withdrawn, without dispute.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the 3rd day after it is posted. Therefore, I find that the tenant received the Notice to end tenancy on June 5, 2014; the date the tenants amended their application.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenants are deemed to have received this Notice on June 5, 2014, I find that the earliest effective date of the Notice is June 15, 2014.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was June 15, 2014.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice ending tenancy that required the tenants to vacate the rental unit on June 15, 2014, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenants have confirmed that they did not pay any rent after the June 2, 2014 Notice was issued and that they did not pay March 2014 rent. Therefore, as June, 2014 rent has not been paid within 5 days of June 5, 2014, pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended on the effective date of the Notice; June 15, 2014.

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$4,800.00 for March, June and July 2014, and that the landlord is entitled to compensation in that amount.

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the security and pet deposits totaling \$1,150.00, in partial satisfaction of the claim.

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenants. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Therefore, the landlord has established a monetary claim, in the amount of \$4,850.00, which is comprised of unpaid rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order for the balance of \$3,700.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The tenant's application is dismissed.

Conclusion

The landlord is entitled to an Order of possession and monetary Order for unpaid rent.

The landlord may retain the security and pet deposit.

The landlord is entitled to filing fee costs.

The tenant's application is dismissed.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 15, 2014

Residential Tenancy Branch

