



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COAST REALTY GROUP (PARKSVILLE) PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlords: OPR OPB MND MNR MNSD MNDC FF

For the tenants: MT CNR MNDC OLC ERP RP LRE RR

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 landlords applied for an order of possession for unpaid rent or utilities, for an order of possession for breaching an agreement with the landlord, for a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for authorization to keep all or part of the tenants’ security deposit and pet damage deposit, and to recover the filing fee.

The tenants applied for more time to make an application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated May 2, 2014, and a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) dated April 30, 2014, to cancel a 10 Day Notice, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, to make emergency repairs for health or safety reasons, to make general repairs to the unit, site or property, and to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided.

Tenant “JTB”, the landlords, and an agent for the landlord (the “agent”) attended the hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The parties confirmed that they received documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. I find the parties were sufficiently served in accordance with the *Act* as a result.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances both parties indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is to determine if the tenancy is going to continue. I find that not all the claims in the parties' Application for Dispute Resolution (the "Application") are sufficiently related to be determined during this proceeding or are premature. I will, therefore, only consider the tenants' request to set aside the 10 Day Notice and for more time to make an application to dispute a Notice to End Tenancy, the landlord's request for an order of possession based on unpaid rent or utilities, the landlord's request for a monetary order for unpaid rent or utilities, and to retain the tenants' security deposit. The balance of the tenants' and the landlords' respective Applications are **dismissed, with leave to re-apply**.

I note that tenants did apply to dispute the 10 Day Notice in accordance with the timelines defined in section 46 of the *Act*. As a result, I dismiss the tenants' application for more time to make an application to dispute the 10 Day Notice as that portion of their application is moot. As the tenants' did not apply to dispute a 1 Month Notice, that portion of their application is dismissed.

Issues to be Decided

- Should the 10 Day Notice dated May 2, 2014 be cancelled?
- Are the landlords entitled to an order of possession under the *Act*?
- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on April 1, 2014, and is scheduled to revert to a periodic, month to month tenancy after March 31, 2015. Monthly rent in the amount of \$1,450.00 is due on the first day of each month. The tenants only paid \$300.00 of the required \$725.00 security deposit listed in the tenancy agreement, and paid \$0.00 towards the required \$725.00 pet damage deposit listed in the tenancy agreement. As a result, the landlord continues to hold only a \$300.00 security deposit and no pet damage deposit, which the tenant confirmed.

The landlord is claiming \$1,450.00 for unpaid May 2014 rent, and \$1,450.00 for unpaid June 2014 rent. The tenant confirmed that rent for May and June of 2014 rent has not been paid. The tenant alleged that the tenants made several attempts to pay May and June 2014 rent and claimed that they sent e-mails to the landlord agent. The tenant confirmed that no e-mails were submitted in evidence to support his testimony. The agent denied that the tenants attempted to pay May or June 2014 rent, and stated that no e-mails were received from the tenants. Furthermore, the agent stated that the business office accepts rental payments Monday to Saturday from 9:00 a.m. to 5:00 p.m. and that there is a specific book for rental payment receipts if tenants pay their rent at her business office.

A copy of the 10 Day Notice dated May 2, 2014, was submitted in evidence. The tenant confirmed that they received the 10 Day Notice on May 2, 2014 and disputed the 10 Day Notice on May 6, 2014. The 10 Day Notice indicates that \$1,450.00 in unpaid rent was due on May 1, 2014, and includes an effective vacancy date of May 12, 2014. The tenants confirmed that rent for May and June of 2014 has not been paid.

The tenant confirmed receipt of a document from the agent submitted in evidence dated April 17, 2014, which indicates that the agent was hired by the landlords to represent the landlords, and to which the tenants were to communicate with the agent for the remainder of the tenancy.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I find the tenants have provided insufficient evidence to support that they made attempts to pay rent for the months of May and June of 2014. The onus of proof is on the tenants to prove that they did pay rent when they apply to dispute a 10 Day Notice. The tenants referred to e-mails and failed to submit those in evidence. As a result, **I dismiss** the tenant's application to cancel the 10 Day Notice dated May 2, 2014. I find that the 10 Day Notice dated May 2, 2014, is valid and I uphold the 10 Day Notice.

Order of Possession – The effective date of the 10 Day Notice was May 12, 2014, which has passed and the tenants continue to occupy the rental unit. Pursuant to section 55 of the *Act*, as I have dismissed the tenants' application to cancel the 10 Day Notice and I have upheld the landlords' 10 Day Notice, **I grant** the landlords an order of possession effective **two (2) days** after service on the tenants. This order must be served on the tenants and may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

Claim for unpaid rent – The parties confirmed that rent for the months of May and June of 2014 have not been paid. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. The tenants continue to occupy the rental unit. The landlords will not regain possession of the unit until after service of the order of possession. I find the landlords have met the burden of proof and **I find** the landlords have established a monetary claim of **\$2,900.00** comprised of \$1,450.00 for unpaid rent for May 2014, and \$1,450.00 for unpaid rent for June 2014.

As the landlords have succeeded with their application, **I grant** the landlords the recovery of their **\$50.00** filing fee.

Monetary Order – I find the landlords have established a total monetary claim of **\$2,950.00**, comprised of \$2,900.00 in unpaid rent, plus the \$50.00 filing fee.

I ORDER the landlords to retain the tenants' full security deposit of \$300.00 in partial satisfaction of the landlords' monetary claim. **I grant** the landlords a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlords in the amount of **\$2,650.00**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenants' application to cancel the 10 Day Notice is dismissed, without leave to reapply, due to insufficient evidence.

The landlords have been granted an order of possession effective two (2) days after service on the tenants. The tenants must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlords have established a total monetary claim of \$2,950.00, comprised of \$2,900.00 in unpaid rent, plus the \$50.00 filing fee.

The landlords have been ordered to retain the tenants' full security deposit of \$300.00 in partial satisfaction of the landlords' monetary claim. The landlords have been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlords in the amount of \$2,650.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: June 25, 2014

Residential Tenancy Branch

