



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MND MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on April 11, 2014, by the Landlords to obtain an Order of Possession for cause and a Monetary Order for; damage to the unit, site or property; for unpaid rent or utilities; to keep the security deposit, and to recover the cost of the filing fee from the Tenants for this application.

Only one Landlord appeared at the scheduled teleconference hearing to submit the merits of their application. Therefore, for the remainder of this decision, terms or references to the Landlord(s) importing the singular shall include the plural and vice versa.

The Landlord provided affirmed testimony that each Tenant was personally served with copies of the Landlords' application for dispute resolution and Notice of dispute resolution hearing on April 16, 2014, in the presence of both Landlords. Based on the submissions of the Landlord I find each Tenant was sufficiently served notice of this proceeding in accordance with section 89 of the Act. Accordingly, I proceeded in the Tenants' absence.

Issue(s) to be Decided

1. Have the Landlords proven entitlement to an Order of Possession?
2. Have the Landlords proven entitlement to a Monetary Order?

Background and Evidence

The Landlord testified that the parties entered into a written tenancy agreement that began in approximately May 2012. Rent is payable on the first of each month in the amount of \$800.00 and in approximately May 2012 the Tenants paid \$400.00 as the security deposit.

The Landlord said after having the unit inspected they personally served the Tenants with a 1 Month Notice for cause on February 27, 2014. The Landlords had not received an application from the Tenants to dispute the Notice.

The 1 Month Notice was issued pursuant to Section 47(1) of the Act for the following reasons:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonable disturbed another occupant or the landlord
 - Put the Landlord's property at significant risk
- Tenant has engaged in illegal activity that has or is likely to
 - Damage the landlord's property
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
 - Jeopardize a lawful right or interest of another occupant or the landlord
- Tenant has caused extraordinary damage to the unit/site or property/park

The Landlord testified that the Tenants continue to reside in the rental unit and have not paid rent for April, May or June 2014. A 10 Day Notice was issued on April 14, 2014 and another 10 Day Notice was issued May 2, 2014. The Landlord is seeking a monetary order for the three months unpaid rent of \$2,400.00 (3 x \$800.00).

Upon review of the Landlords' application, the Landlord stated that they have not been able to calculate the total cost of damages as the Tenants have refused them access to the rental property. As a result, the Landlord stated that they wished to withdraw their claim for damages, with leave to reapply at a future date when they will know the total cost for damages to the rental property.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenants who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their evidence.

Upon review of the 1 Month Notice to End Tenancy issued February 27, 2014, I find the Notice to be completed in accordance with the requirements of the Act and I find that it

was served upon the Tenants in a manner that complies with the Act. The effective date of the Notice was **March 31, 2014**.

Section 47(4) of the Act stipulates that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

In this case the Tenants would have had to file their application for dispute no later than March 9, 2014. At the time the Landlords filed their application for an Order of Possession on April 11, 2014, the Tenants had not made application to dispute the 1 Month Notice.

Section 47(5) of the Act stipulates that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and (b) must vacate the rental unit by that date.

As noted above this tenancy ended **March 31, 2014**, in accordance with the 1 Month Notice. Therefore, I find the Landlords are seeking money for use and occupancy of the unit and not rent for April, May, and June 2014.

The Tenants continue to reside in the unit and the Landlords will not regain possession until service of the Order of Possession. The Landlords will then have to repair the unit and seek new tenants; therefore, I find the Landlords are entitled to payment for use and occupancy and any loss of rent for the entire months of April, May, and June 2014, in the amount of **\$2,400.00**.

The Landlords have succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlords are entitled to a monetary claim and that claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Use & Occupancy & Loss of Rent to June 30, 2014	\$2,400.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,450.00
LESS: Security Deposit \$400.00 + Interest 0.00	<u>-400.00</u>
Offset amount due to the Landlord	<u>\$2,050.00</u>

Conclusion

The Landlords have been granted an Order of Possession effective **2 Days upon Service** to the Tenants. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlords have been awarded a Monetary Order for **\$2,050.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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 04, 2014

Residential Tenancy Branch

