



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR MNR MNDC MNSD FF
CNR MNDC FF

Preliminary Issues

During the course of this proceeding the parties confirmed that the Tenants vacated the property by June 30, 2014 and the Landlord regained possession of the unit on that date. The Landlord confirmed that they were no longer seeking to obtain an Order of Possession and the Tenants confirmed they were no longer disputing the 10 Day eviction Notice.

The Landlord requested that her application be amended to correct the spelling of A.E.'s last name as she had inadvertently left the letter "i" off the end of his name. A.E. did not dispute the request to amend the spelling of his surname. Accordingly, the application and style of cause have been amended as per the request, pursuant to section 64 (3)(c) of the *Act*.

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed on June 19, 2014, to obtain a Monetary Order for unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep the security and pet deposits as partial satisfaction of their claim; and to recover the cost of the filing fee from the Tenants for their application.

The Tenants filed on June 6, 2014, to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord for their application.

The Landlord was represented by their agent N.S., from their head office, (hereinafter referred to as the Landlord), and a temporary manager, V.J., who was covering for the regular resident manager who was on holiday. The temporary manager did not provide testimony during this proceeding; therefore, for the remainder of this decision any reference made to a submission from the Landlord was provided by N.S.

The Tenants appeared with their “translator” N.S.; however, all testimony was provided by N.S. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa and relate to the submissions made by their translator, N.S.

Each party gave affirmed testimony and confirmed receipt of evidence served by the other. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to a Monetary Order?
2. Have the Tenants proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on December 1, 2012 and switched to a month to month tenancy after November 30, 2013. The Tenants were required to pay rent of \$1,140.00 and on November 26, 2012 the Tenants paid \$570.00 as the security deposit plus \$300.00 as a pet deposit. On May 31, 2014 the Tenants gave written notice to end the tenancy and they vacated the property on June 30, 2014. The parties conducted a walk through inspection at move out on June 30, 2014, during which the Tenants provided the resident manager with their forwarding address.

The Landlord testified that they received the Tenants' June 1, 2014 rent payment by cheque and after depositing the cheque they were notified that the Tenants had put a stop payment on the cheque. They argued that the Tenants remained in possession of the unit until June 30, 2014; therefore, they are seeking to recover the unpaid rent of \$1,140.00 plus the late payment fee of \$20.00 and the \$25.00 NSF / stop payment fee as provided for in the tenancy agreement at section 3(a). The Landlord noted that they had applied to offset the deposits against their claim.

The Tenants did not dispute that they put a stop payment on their June 1, 2014 rent payment and submitted that they did so because they feel they are entitled to be compensated for their moving costs. The Tenants argued that they were approached by the Landlord and told they would have to move out of their unit while it was being renovated and upon completion they

would be required to pay higher rent. As a result, the Tenants submitted that they feel they were forced to move out of their suite, which is why they gave their notice to end the tenancy.

The Tenants submitted that they decided to move instead of seeking assistance through the *Residential Tenancy Branch* because they are new to this Country and were not aware of the *Residential Tenancy Act*.

In closing, the Landlord disputed the Tenants' allegation that they were forced to move and while they had knowledge of an offer to allow tenants to have their unit renovated, they did not submit evidence that would support they were told they had to pay higher rent.

Analysis

Landlord's application

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

The Landlord claimed unpaid rent of \$1,140.00 that was due June 1, 2014, in accordance with section 26 of the Act. Based on the aforementioned, I find the Landlord has met the burden of proof and I award them unpaid rent for June 2014 in the amount of **\$1,140.00**.

The tenancy agreement, section 3(a) provides for \$20.00 late payment fees and \$25.00 NSF / stop payment fees, in accordance with # 7 of the *Residential Tenancy Regulation*. The evidence supports the June 1, 2014 rent was late as the Tenants placed a stop payment on their cheque. Therefore, I find the Landlord has proven their claim, and I award the June 2014 late fees plus NSF/stop payment fees in the amount of **\$45.00** (\$20.00 + \$25.00).

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee

Tenants' application

Section 44 of the Act provides that a tenancy ends if a tenant issues the landlord a notice to end tenancy.

In this case the Tenants issued notice to end their tenancy effective June 30, 2014, and vacated the unit based on that notice. They now claim for compensation alleged they were forced to move by the Landlord.

In the absence of proof to the contrary, I find the Tenants submitted insufficient evidence to prove their claim, and the claim is dismissed, without leave to reapply.

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

Unpaid June 2013 Rent	\$1,140.00
Late fee and stop payment fee	45.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,235.00
LESS: Pet Deposit \$300.00 + Interest 0.00	-300.00
LESS: Security Deposit \$570.00 + Interest 0.00	<u>-570.00</u>
Offset amount due to the Landlord	<u>\$ 365.00</u>

Conclusion

The Landlord has been issued a Monetary Order in the amount of **\$365.00**. 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.

The Tenants' application is dismissed, without leave to reapply.

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: July 30, 2014

Residential Tenancy Branch

