



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF
 CNR OLC

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed on June 5, 2014, seeking an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; to keep all of the security deposit; 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 Tenants for this application.

The Tenants filed on June 4, 2014, seeking an Order to cancel the notice to end tenancy for unpaid rent and to obtain an Order to have the Landlords comply with the Act, regulation, or tenancy agreement.

The Landlords were represented by Landlord L.P. who affirmed that she was at the hearing to represent both Landlords. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa.

The Landlord testified that on June 5, 2014, she personally served each Tenant with copies of the Landlords' application for dispute resolution and Notice of dispute resolution hearing. 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; and I proceeded in the Tenants' absence.

No one appeared on behalf of the Tenants despite the Tenants being served with notice of the Landlords' application in accordance with the Act and despite the Tenants having their own application for dispute resolution scheduled for the same hearing date and time. Accordingly, I proceeded in the absence of the Tenant.

Issue(s) to be Decided

1. Have the Landlords regained possession of the unit?
2. Have the Landlords proven entitlement to a Monetary Order?
3. Should the Tenants' application be dismissed with or without leave to reapply?

Background and Evidence

The Landlord submitted evidence that the parties entered into a written month to month tenancy agreement that began on January 1, 2013. Rent was payable on the first of each month in the amount of \$2,250.00. Between January 2013 and June 2013 the Tenants paid a total of \$1,125.00 as the security deposit.

The Landlord testified that the parties attended a Dispute Resolution Hearing on June 26, 2014 during which they mutually agreed to end the tenancy effective June 30, 2014. The Landlords were issued an Order of Possession and the Tenants vacated the property by June 30, 2014, leaving the rental unit damaged, unclean, and without paying the May or June 2014 rents. The Landlord stated that the Tenants vacated the property without providing her with a forwarding address and their phone number is no longer working. The Landlord confirmed that she no longer required an Order of Possession as they regained possession on June 30, 2014.

The Landlord submitted that when the Tenants failed to pay the May 1, 2014 rent the Landlord personally served S.L. with a 10 Day Notice to end tenancy on May 30, 2014.

On a procedural note the Landlord continually interrupted me throughout this proceeding. Each time I attempted to explain the process to her she became argumentative and would interrupt me again. I cautioned the Landlord several times that I could not hear matters pertaining to damages or other losses as her claim related only to unpaid rent and to keep the security deposit. The Landlord indicated she had submitted additional late evidence to increase her claim for damages done to the unit. Each time I attempted to explain that the Landlord would be required to file another application the Landlord would interrupt me again.

Analysis

Landlords' Application

Given the evidence before me, in the absence of testimony from the Tenants who did not appear despite this hearing being convened to hear matters for their own

application, I accept the undisputed version of events as discussed by the Landlords and corroborated by their evidence.

The Landlords claim for unpaid rent for May and June 2014, in the amount of \$4,500.00 (2 x \$2,250.00), pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. 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. Therefore, I find that the Landlord has proven their claim and I grant them a monetary order for unpaid rent of **\$4,500.00**.

At the time the Landlords filed this application on June 5, 2014, rent for July or August 2014 was not due. The Landlord filed a subsequent application to end the tenancy early, without notice, and was issued an Order of Possession effective June 30, 2014. As this tenancy ended June 30, 2014, and the Landlord regained possession of the unit June 30, 2014, I find the Landlord is not entitled to the payment of rent for July or August 2014. Accordingly, I dismiss the Landlords' claim for unpaid rent for July and August 2014, without leave to reapply.

Section 7 of the *Act* stipulates that the party making the application must do whatever is reasonable to minimize their damage or loss. As the Landlord regained possession of the rental unit on June 30, 2014, I find the Landlords must do what is reasonable to re-rent the unit for as soon as possible. If the Landlords are unable to re-rent the unit or if they have suffered further loss, they are at liberty to file another claim for Dispute Resolution.

The Landlords have primarily succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee.

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

Unpaid May and June 2014 Rent	\$4,500.00
Filing Fee	<u>100.00</u>
SUBTOTAL	\$4,600.00
LESS: Security Deposit \$1,125.00 + Interest 0.00	<u>-1,125.00</u>
Offset amount due to the Landlords	<u>\$3,475.00</u>

Tenants' Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the Applicant Tenants, the telephone line remained open while the phone system was monitored and no one on behalf of the Applicant Tenants called into the hearing during this time. Based on the aforementioned I find that the Tenants have failed to present the merits of their application and the application is dismissed, without leave to reapply.

Conclusion

The Landlords have withdrawn their request for Orders of Possession as possession was regained on June 30, 2014.

The Landlords have been awarded a Monetary Order for **\$3,475.00**. 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 HEREBY 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 24, 2014

Residential Tenancy Branch

