



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNSD, MNR, OPR, FF
For the tenant: MNSD, MNDC, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the "Act").

The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent, for authority to retain the tenants' security deposit, and for recovery of the filing fee.

The tenants applied for a monetary order for a return of their security deposit, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue-The tenants have now vacated the rental unit and I therefore have excluded the landlord's request for an order of possession for the rental unit.

Preliminary and Procedural Matters

Section 5.1 of the Rules allow a respondent to file an application for dispute resolution in response to a related application, and it is termed a cross application. In this case, the landlord filed his application on May 7, 2014, seeking an end to the tenancy by way of an order of possession for the rental unit and a monetary order for unpaid rent, pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice").

On June 16, 2014, the week prior to the hearing, the tenants filed an application seeking monetary compensation, attached with a significant amount of documentary and digital evidence, and not in dispute of the Notice.

I do not find the tenants' application to be sufficiently related to the primary issue listed in the landlord's application, and that is whether this tenancy would continue.

I therefore find that the tenants' application was not a cross application as contemplated and defined in the Rules, was improperly added as a cross application, and I therefore dismiss their application, **with leave to reapply**.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation, and to recover the filing fee?

Background and Evidence

The undisputed evidence was that this tenancy began on May 25, 2013, ended on May 10, 2014, when the tenants vacated the rental unit, monthly rent was \$700, and the tenants paid a security deposit of \$350 at the beginning of the tenancy.

Pursuant to the Rules of Procedure, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

The landlord, through his translator, submitted that the tenants were served with the Notice on April 15, 2014, by attaching it to the tenants' door, listing unpaid rent of \$700 due as of April 1, 2014. The effective move-out date listed was April 25, 2014.

The landlord asserted that since the issuance of the Notice, the tenants did not make any further rent payments prior to vacating the rental unit, and owe unpaid rent for April and May 2014.

The landlord's monetary claim is \$2100, comprised of unpaid rent for April, May, and June 2014.

The landlord's relevant documentary evidence included the Notice, written tenancy agreement, and receipts for rent from the tenants.

Tenants' response-

The tenants denied receiving the Notice, suggesting that it was possibly posted to the door of the adjoining basement level rental unit.

The tenants denied owing rent, due to their expenses incurred in vacating the rental unit while bedbug treatment took place, which included food, hotel, fuel, and loss of

revenue. The tenants further submitted that the landlord agreed to reimburse those expenses.

The tenants submitted that they have had other verbal agreements with the landlord for various expenses, for which the landlord agreed to reduce the monthly rent at those times.

Landlord's response-

The landlord denied agreeing to reimburse the tenants all their expenses, but did agree that the tenants could withhold \$100 for hotel costs for 1 night following a bedbug treatment.

Analysis

Landlord's Application:

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent, pursuant to section 46 of the Act. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days.

In this case, while the tenants denied receiving the Notice and whether or not that is true, I find that the landlord submitted sufficient evidence that the tenants did not pay monthly rent for April or May 2014 that was owed under the tenancy agreement.

I also find that in light of the landlord's denial, the tenants submitted insufficient evidence that the landlord agreed that he would reimburse the tenants' expenses, which in this case were greater than the monthly rent.

I therefore find the landlord is entitled to a monetary order for unpaid rent for April and May. As the landlord agreed that the tenants could deduct \$100 from April's rent, I find the landlord is entitled to a monetary award of \$1350, comprised of unpaid rent of \$600 for April 2014, \$700 for May 2014, and \$50 for recovery of the filing fee for this application.

I have not granted the landlord a monetary award for unpaid rent for June 2014, as the landlord provided no proof that he did not have the rental unit re-rented by that time or that he was entitled to it under the Act due to any insufficient notice from the tenants, if that was the case. I therefore dismiss his request for unpaid rent for June 2014.

Conclusion

The landlord's application has been largely successful.

At the landlord's request, I allow him to retain the tenants' security deposit of \$350 in partial satisfaction of his monetary award of \$1350, and I grant the landlord a final, legally binding monetary order for the balance due pursuant to section 67 of the Act for the amount of \$1000, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay, the order must be served upon the tenants and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

The tenants' application is dismissed, with leave to reapply, for the reasons cited above.

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 25, 2014

Residential Tenancy Branch

