



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlords on September 3, 2014, to obtain an Order of Possession for landlord's use of the property and 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 Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord R.S. the Landlord's Agent and the Tenant. Each party gave affirmed testimony.

The Landlord affirmed that they did not serve the Tenant with a copy of their one page written submission which I find to be a breach of 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice.

Therefore as the Tenant has not received copies of the Landlords' evidence I find that the Landlords' evidence cannot be considered in my decision. I did however consider the Landlords' testimony.

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. Have the parties agreed to end this tenancy?
2. Have the Landlords proven entitlement to a Monetary Order?

Background and Evidence

The Landlord testified that they entered into a written month to month tenancy agreement with the Tenant that began on January 17, 2014, for the monthly rent of \$550.00 which is payable on the first of each month. The Landlord stated that the Tenant did not pay a security deposit.

The Tenant testified that she had entered into a written tenancy agreement with the previous owner that began on November 1, 2012. Rent is \$550.00 and is payable on the first of each month and on or before November 1, 2012 she paid the previous owner \$275.00 as the security deposit. She stated that the previous owner moved out of the upper suite and these new Landlords moved in sometime in January 2014.

The Landlord confirmed that they purchased the property effective January 17, 2014 and argued that he had signed a new tenancy agreement with the Tenant but has since misplaced it and that is why he did not submit it into evidence.

The Landlord initially testified that he served the Tenant a 2 Month Notice to end tenancy for landlord's use on August 3, 2014 and posted it to her door that same day. He recalls getting a telephone call from the Tenant where the Tenant said she was going to rip up the eviction notice.

Upon further clarification the Landlord's Agent testified that the 2 Month Notice was signed and issued on June 4, 2014 with an effective date of August 3, 2014.

The Tenant testified and argued that she had not called the Landlord in August 2014 and had not threatened to rip up an eviction Notice at that time. She stated that \$120.00 of her rent is paid directly to the Landlord on the first of each month and she had been paying the balance of \$430.00 each month to the Landlord. The Tenant confirmed that she had not made any payments towards rent for September or October 2014 other than the \$120.00 that would have been paid directly to the Landlord.

The parties were given the opportunity to settle these matters during which the parties mutually agreed to end this tenancy effective November 15, 2014.

In closing, the Tenant argued that the Landlord had placed a lock on the mail box and was withholding her mail. I informed the Landlord that he was required to ensure the Tenant's mail was safely delivered to her for the duration of this tenancy.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

During the hearing, the parties mutually agreed to end this tenancy effective November 15, 2014. Accordingly, I award the Landlord an Order of Possession.

Section 51 (1) of the *Act* provides that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 51 (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

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.

Based on the above, I accept that the Tenant is entitled to compensation equal to 1 month's rent of \$550.00 resulting from being served a 2 Month Notice to end tenancy. Therefore, in the presence of the undisputed testimony that only \$120.00 has been paid towards September and October 2014 rent, I find the Landlords have met the burden of proof to be awarded a Monetary Order for unpaid rent and future rent up to November 15, 2014, in the amount of **\$585.00**. This amount is comprised of the following:

| | |
|-----------------|---|
| \$550.00 | September 2014 Rent |
| 550.00 | October 2014 Rent |
| 275.00 | November 1 – 15, 2014 Rent |
| - 120.00 | LESS prepaid for September 2014 |
| - 120.00 | LESS prepaid for October 2014 |
| <u>-550.00</u> | LESS compensation for issuing 2 Month Notice |
| \$585.00 | Balance owed to Landlord for rent up to November 15, 2014 |

Section 90 of the *Act* stipulates that the obligations of a landlord under this *Act* with respect to a security deposit or a pet damage deposit run with the land or reversion.

Based on the submissions before me I accept that the Tenant had paid \$275.00 to the former owner, as the security deposit, which was required to be transferred to the new owner in the disbursements of the property sale.

The Landlords have primarily 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 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 and future Rent to November 15, 2014 | \$585.00 |
| Filing Fee | <u>50.00</u> |
| SUBTOTAL | \$635.00 |
| LESS: Security Deposit \$275.00+ Interest 0.00 | <u>-275.00</u> |
| Offset amount due to the Landlords | <u>\$360.00</u> |

Conclusion

The Landlords have been granted an Order of Possession effective **November 15, 2014, at 1:00 p.m. after service upon the Tenant**. In the event that the Tenant does 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 **\$360.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does 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: October 27, 2014

Residential Tenancy Branch

