



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR, MNSD, FF, CNR, MNDC

Introduction

This hearing dealt with Landlord NG's ("landlord") application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

This hearing also dealt with the tenants' cross-application naming both landlords as Respondents, pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated November 2, 2014 ("10 Day Notice"), pursuant to section 46;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The tenants' support advocate, JD, attended the hearing but did not provide any testimony. Only the landlord appeared on behalf of the landlords. The landlord signed the Residential Tenancy Agreement; the other landlord SG/Respondent ("SG"), in the tenants' application did not.

The landlord gave sworn testimony that a 10 Day Notice, with an effective move-out date of November 14, 2014, was left in the door slot of the tenants' rental unit on November 3, 2014. The tenant BDG confirmed that both tenants received the 10 Day Notice on November 3, 2014. Although this method of service delivery is not one that is allowed under section 88 of the *Act*, the tenants confirmed receipt, had notice of the unpaid rent and made a cross-application to cancel the landlord's 10 Day Notice. Based on the sworn testimony of the parties, I find that

there would be no denial of natural justice in proceeding with this hearing and considering both the landlord's and tenants' applications. In accordance with section 71(2)(c) of the Act, I find that the tenants were sufficiently served with the 10 Day Notice on November 3, 2014.

The landlord testified that she served both tenants personally with her Application for Dispute Resolution hearing package ("Landlord's Application") on November 15, 2014. The tenant BDG confirmed that both tenants received the Landlord's Application on November 15, 2014 but that it was left outside of their rental unit door and they were not served personally. Although this method of service delivery is not one that is allowed under section 89 of the Act, the tenants confirmed receipt and had notice of this hearing, as they made a cross-application. The tenant BDG further confirmed that the tenants were not prejudiced by this service method and wished to proceed with the hearing. Based on the sworn testimony of the parties, I find that there would be no denial of natural justice in proceeding with this hearing and considering the landlord's application. In accordance with Section 71(2)(c), I find that the tenants were sufficiently served with the Landlord's Application on November 15, 2014.

The tenant BEBDG testified that he personally served the landlord with the tenants' Application for Dispute Resolution hearing package ("Tenants' Application") on November 5, 2014 via registered mail. The landlord confirmed receipt on this date. In accordance with sections 89 and 90 of the Act, I find that the landlord was served with the Tenants' Application on November 5, 2014.

The tenant BEBDG testified that he served the other landlord SG/Respondent, with the Tenants' Application, via registered mail on November 6, 2014. He provided a tracking number orally during the hearing. In accordance with sections 89 and 90 of the Act, I find that SG was deemed served with the Tenants' Application on November 11, 2014, the fifth day after its registered mailing. The landlord testified that SG is her husband who previously resided with her until March 2014, but she is unaware as to whether he received the tenants' application, as she received notice at her house to pick up the registered mail package but she did not do so, on his behalf. SG did not appear at this hearing.

At the outset of the hearing, the tenants withdrew their application to recover the filing fee from the landlord, as they were approved for a fee waiver and did not pay the fee.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this periodic tenancy began on August 1, 2013, while the tenant BEBDG testified that it began on August 3, 2013. A security deposit in the amount of \$375.00 was paid by the tenants prior to this tenancy. The tenants continue to reside in the rental unit, which is a basement suite in the landlord's house.

The landlord testified that monthly rent in the current amount of \$825.00 is payable on the first day of each month. She stated that rent was initially \$750.00 until January 1, 2014, when it was raised to \$825.00, upon agreement between the landlord and tenants in December 2013, to include an additional \$75.00 for utilities each month. The landlord provided receipts for the tenants' cash payments, which were provided in both applications, showing the breakdown of rent and utilities for the first few receipts and then the total amount of \$825.00 for the remaining receipts. The tenant BEBDG testified that rent was initially \$750.00 and no legal notices of rent increase were provided to the tenants, but they had been paying \$825.00 from October 2013 until October 2014.

The landlord SG/Respondent did not sign the residential tenancy agreement in October 2014, the rental receipts or the 10 Day Notice. He had discussions with the tenants regarding the rent and utility amounts for the first eight months of this tenancy.

A handwritten tenancy agreement from August 2013, with the landlord's name and SG's name, and signed by one of the tenants, MAC, stating rent in the amount of \$750.00 per month, was provided with the Landlord's Application. A residential tenancy agreement signed by both parties in October 2014, stating rent in the amount of \$825.00 per month including \$75.00 for utilities, was provided with the Landlord's Application.

The landlord is seeking an order of possession for unpaid November 2014 rent. She seeks a monetary order of \$1,566.34 for unpaid November 2014 rent (outstanding balance of \$741.34) and December 2014 rent (\$825.00) and \$50.00 to recover the filing fee for her application. She seeks to retain the tenants' security deposit in partial satisfaction of the monetary award.

The tenants seek to cancel the landlord's 10 Day Notice and a monetary order in the amount of \$308.66 for overpayment of rent throughout this tenancy.

The landlord stated that the tenants only paid \$83.66 for November 2014 rent. The tenants agreed that they only paid this reduced amount to account for their overpayment of rent in the amount of \$75.00 for each month from October 2013 to October 2014. They stated that the landlord illegally increased their rent from \$750.00 to \$825.00 without providing proper notice as per the *Act*. They provided a note with their reduced rent payment in November 2014, explaining the above.

The tenants gave multiple notices to the landlord in September and October 2014, to vacate the rental unit but had to rescind those notices based on health issues and difficulty finding a new rental unit. During the hearing, the tenants expressed a desire to vacate the rental unit. Both parties testified that rent for December 1, 2014 is still unpaid to date.

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 discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

The landlord and both tenants agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on December 31, 2014, by which time the tenants will have vacated the rental unit;
2. The tenants agreed to pay the landlord the total amount of \$1,000.00 by 8:00 p.m. on December 1, 2014. Both parties agreed that this amount includes outstanding rent owing for November 2014, to cover December 2014 rent, to satisfy the tenants' overpayment of rent throughout this tenancy and to settle the landlord's filing fee issue;
3. Both parties agreed that the monetary terms of this settlement as outlined above, constituted full satisfaction of all outstanding monetary claims for both parties;
4. The landlord agreed to amend her rental unit advertisements to ensure that the rental unit is only available for rental on or after January 1, 2015, and not December 15, 2014 as currently stated;
5. The landlord agreed to withdraw the 10 Day Notice of November 2, 2014.
6. Both parties agreed that the tenants' security deposit will be dealt with at the end of this tenancy, in accordance with the *Act*.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties.

Conclusion

To give effect to the settlement reached between the parties, I issue the attached Order of Possession to be used by the landlord **only** if the tenants fail to vacate the rental premises by 1:00 p.m. on December 31, 2014. The landlord is provided with this Order in the above terms and the tenants must be served with this Order in the event that the tenants do not vacate the premises by 1:00 p.m. on December 31, 2014. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

To give effect to the settlement reached between the parties, I issue the attached Monetary Order in the amount of \$1,000.00, to be used by the landlord **only** if the tenant(s) do not abide by the terms set out in the above agreement. The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order in the event that the tenant(s) do not abide by the terms set out in their agreement. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's application to recover the filing fee, was withdrawn.

The landlord's 10 Day Notice, dated November 2, 2014, is set aside and of no force and effect.

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: December 11, 2014

Residential Tenancy Branch

