



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC; OPB; MNDC; FF

Introduction

This is the Landlords' application for an Order of Possession; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlord ER testified that she mailed the Notice of Hearing documents to the Tenants, by registered mail, on December 10, 2014. The Landlords provided copies of the registered mail receipts and tracking numbers in evidence.

The Tenant acknowledged service of the Notice of Hearing documents and the Landlord's documentary evidence.

Issues to be Decided

- Are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to compensation for loss of revenue?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy began on April 23, 2014. The tenancy agreement is a one year lease, ending March 23, 2015. Monthly rent is \$1,700.00, due on the twenty-third day of each month. The Tenants paid a security deposit in the amount of \$850.00 on April 16, 2014 and a pet damage deposit of \$500.00 on April 13, 2014.

The Landlords issued a One Month Notice to End Tenancy for Cause on November 26, 2014, and posted a copy of the Notice to the Tenants' door. A copy of the Notice was provided in evidence. The male Tenant acknowledged that he received the Notice on November 26, 2014 and stated that he did not dispute the Notice, but disagreed with the end of tenancy date.

The Landlords have listed the rental property for sale. The Landlords testified that the Tenants are refusing to allow the Landlords to show the rental unit. They seek compensation for loss of

revenue in the amount of \$5,200.00 (3 months' rent) because they do not believe that the Tenants will cooperate with showing the rental unit to potential buyers. The Landlords asked that their monetary award be held in trust by the director, pursuant to the provisions of Section 65 of the Act.

Analysis

I accept that the Notice to End Tenancy was received by the Tenants on November 26, 2014. Section 53 of the Act provides that an incorrect end-of-tenancy date on a notice to end tenancy is automatically corrected to the earliest date that complies with the Act. Based on the foregoing, I find that the Tenants are conclusively presumed under Section 47(5) of the Act to have accepted that the tenancy will end on January 22, 2015. I find that the Landlords are entitled to an Order of Possession effective 1:00 p.m., January 22, 2015.

This is the Landlords' claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenants pay for the loss requires the Landlords to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlords followed Section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Landlords' application for compensation is premature. The Tenants have paid rent for the period ending January 22, 2015, and therefore I find that they have not yet suffered a loss. Furthermore, the Landlords will be required to provide evidence that they followed section 7(2) of the Act, in the event that they do suffer a loss of income. Therefore, I dismiss this portion of their Application with leave to re-apply.

The Tenants did not dispute the Notice to End Tenancy and therefore the Landlords' application for recovery of the filing fee is dismissed.

The Tenants are cautioned that the Landlords have the right to access to the rental unit, further to the provisions of Section 29 of the Act, which provides:

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

If the Landlords provide notice to access the rental unit in accordance with the provisions of Section 29 of the Act, the Tenants must allow such access to take place whether or not the Tenants are present. If the Tenants receive such notice and refuse access to the Landlords, they may be found to be in breach of the Act.

Conclusion

I hereby provide the Landlords with an Order of Possession effective **1:00 p.m., January 22, 2015**, for service upon the Tenants. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlords' application for compensation for damage or loss under the Act, regulation or tenancy agreement is **dismissed with leave to reapply**.

The Landlords' application for recovery of the filing fee is **dismissed**.

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: January 09, 2015

