



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNSD

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause pursuant to section 55; and
- a monetary order for unpaid rent; and
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The tenants did not attend this hearing, although I waited until 0959 in order to enable the tenants to connect with this teleconference hearing scheduled for 0930. The landlord SG (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he served the tenants with the dispute resolution package on 4 February 2015 by registered mail. The landlords provided me with two Canada Post tracking numbers that showed the same. On the basis of this evidence, I am satisfied that the tenants were deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

The landlord testified that he served the tenants with the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on 29 December 2014 by delivering to the tenant CR. The landlords provided me with proof of service document in which the tenant CR acknowledged delivery of the 1 Month Notice. On the basis of this evidence, I am satisfied that the tenants were served with the 1 Month Notice pursuant to section 88 of the Act.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for cause? Are the landlords entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around it are set out below.

The tenants and landlords entered into a written tenancy agreement on 17 September 2014. This tenancy began on or about 1 October 2014. Monthly rent of \$650.00 is due on the first. The landlord testified that the landlords continue to hold the tenants' security deposit of \$325.00, which was collected on 24 September 2014.

On 29 December 2014, the landlords issued the 1 Month Notice to the tenants. The 1 Month Notice set out an effective date of 29 January 2015. The 1 Month Notice set out that it was given for six reasons:

- the tenant is repeatedly late paying rent;
- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk;
- the tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; or
- the rental unit must be vacated to comply with a government order.

The landlord testified that the predominant issue is the tenants' continued disturbance of the other occupants of the residential property and the neighbours to the property. The landlord testified that the two tenants often get into disagreements which become very loud. The landlord testified that the police frequently attend at the rental unit. The landlord testified that when he spoke to an officer attending at the rental unit, the officer

informed the landlord that the police attend at the rental unit approximately three times per week.

The landlord testified that he has received approximately six complaints from the other occupants. The landlord testified that the police called him approximately four times to discuss the continued disturbance from the rental unit.

The landlord testified that the tenants have rental arrears totalling \$1,600.00: \$300.00 remaining for December, \$650.00 for January and \$650.00 for February. The landlord seeks a monetary order for \$1,400.00 as when he was making this application he mistakenly believed monthly rent to be \$550.00. The landlord informed me that he did not wish to amend the application. The landlord testified that the landlords have not received any payments towards rent from the tenants since December 2014.

Analysis

In an application for an order of possession on the basis of a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met. Subparagraph 47(1)(d)(i) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. The landlords have set out in their 1 Month Notice, among other reasons, that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The landlord has provided uncontested and sworn testimony that the conduct of the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. Furthermore, the 1 Month Notice states that the tenants had ten days, from the date of service of that notice, to apply for dispute resolution or the tenants would be presumed to have accepted that the tenancy would end on the corrected effective date of the 1 Month Notice, 31 January 2015. The tenants did not apply to dispute the 1 Month Notice within ten days from the date of service.

For the reasons outlined above, I find that the 1 Month Notice is validly issued and will not consider the other reason for cause set out by the landlord in the 1 Month Notice. The landlords are entitled to an order of possession effective two days from service on the tenants.

The landlord has provided uncontested sworn testimony that the tenants have rental arrears of \$1,600.00. The landlords applied for a monetary order in the amount of \$1,400.00. I find that the landlords have proven their entitlement to this amount.

The landlords applied to keep the tenants' security deposit. I allow the landlords to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$1,075.00 under the following terms:

| Item | Amount |
|--------------------------------|-------------------|
| Unpaid December Rent | \$300.00 |
| Unpaid January Rent | 550.00 |
| Unpaid February Rent | 550.00 |
| Offset Security Deposit Amount | -325.00 |
| Total Monetary Order | \$1,075.00 |

The landlords are provided with these orders in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

The landlords are provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: February 18, 2015

Residential Tenancy Branch

