



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution 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 paid for this application.

The landlord and the tenants attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issue regarding service of the evidence or application.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence 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.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and to recover the filing fee?

Background and Evidence

The parties agreed that this tenancy began in February 2014, and total monthly rent was \$1100.00.

The landlord submitted that she received two separate security deposits, \$187.50 from a tenant attending the hearing VG and \$187.50 from another person not named in the landlords' application as a tenant.

The tenants submitted that the other person paying a security deposit was also a tenant and should have been named in the landlord's application. The tenants submitted further that tenant AM was obligated to pay \$350.00 monthly, that tenant VG was obligated to pay \$375.00 monthly, and the other unnamed tenant was to pay \$375.00 monthly, for a total of \$1100.00.

The parties confirmed that all three tenants were co-tenants.

The landlord gave evidence that on February 13, 2015, the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by leaving it with the tenants, listing unpaid rent of \$1540 as of February 6, 2015. The effective vacancy date listed on the Notice was February 15, 2015.

A 10 Day Notice to end the tenancy is not effective earlier than 10 days after the date the tenant receives the Notice. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date, February 15, 2015 is changed to February 23, 2015.

The Notice informed the tenants that the Notice would be cancelled if the rent was paid within 5 days. The Notice also explained that alternatively the tenants had 5 days to dispute the Notice by making an application for dispute resolution.

The landlord was unclear of the payments received on behalf of the tenants, as the monthly rent was paid by a government ministry. Additionally, the landlord failed to provide any accounting records showing payments.

The landlord's monetary claim was \$2640.00, which was comprised of unpaid rent of \$1000.00 for December 2014, \$190.00 for January 2015, \$350.00 for February 2015, and \$1100.00 for March 2015. The landlord also listed the amount of \$500.00 as part of

her monetary claim as a “damage” deposit, rather than the 2 amounts given in testimony.

The tenants submitted documentary evidence which showed payments to the landlord for a period of time, including through the present. The tenants submitted that the landlord had been fully paid all rent due, with the exception of \$190.00 for January 2015.

The tenants confirmed that they did not file an application for dispute resolution in dispute of the Notice, as the landlord’s application was filed shortly after the Notice and they assumed the issues would be addressed at the hearing.

Analysis

The undisputed evidence shows that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on or about February 13, 2015, did not file an application for dispute resolution in dispute of the Notice within 5 days of service and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective 2 days after service of the order upon the tenants.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord’s Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

As to the landlords’ monetary claim, I find that the landlord failed to convince me that the tenants owed the amount listed on the Notice, or \$1540.00, but I find that there was unpaid rent on the day the Notice was issued, that being the amount of \$190.00 for January 2015, due to the tenants’ confirmation. I further relied upon the tenants’ documentary evidence showing payments to the landlord, and the landlord’s lack of any accounting records showing payments for this tenancy.

As I have found that the tenants owed unpaid rent when the Notice was issued, I find the landlord is entitled to a monetary award for unpaid rent in the amount of \$190.00. I also allow the landlord to recover the filing fee of \$50.00 paid for this application.

Due to the above, I grant the landlord a monetary order in the amount of \$240.00, comprised of unpaid rent of \$190.00 and the filing fee of \$50.00, which is enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the order 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.

I note that I have not directed the landlord to retain the tenants' security deposit in partial satisfaction of their monetary award, as there was conflicting information from the landlord as to the actual amount.

I further note that both parties submitted evidence regarding an apparent 1 Month Notice to End Tenancy for Cause served by the landlord on the tenants; however, I have not addressed this matter as the landlord did not apply seeking enforcement of this Notice and also due to the fact that Notice was not submitted.

Conclusion

The landlord's application for an order of possession for the rental unit and a monetary order for unpaid rent has been granted.

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: March 6, 2015

Residential Tenancy Branch

