



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Albina Apartments Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the landlord: MNSD, OPR, MNR, MNDC, FF
For the tenant: CNR, MT

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy 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 money owed or compensation for damage or loss and unpaid rent, for authority to retain the tenants’ security deposit, and for recovery of the filing fee paid for this application.

The tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) and for an order granting more time to make an application to cancel the Notice.

The landlord’s agent (hereafter “landlord”) and tenants “BC” and “LG” attended the hearing. At the beginning of the hearing, neither party raised any issue regarding the service of the other’s application or evidence. It is noted that BC and LG were present with the landlord for this hearing and all participated from the landlord’s office.

The landlord submitted evidence by way of witnessed statements showing that the two tenants not present, “DF” and “AW” were served the landlord’s application and notice of hearing separately on February 18, 2015, by leaving the documents with the tenants. Based upon the evidence of the landlord, I find that the 2 tenants not attending, DF and AW, were served in a manner complying with section 89(1) of the Act, and the hearing proceeded in their absence.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter all parties were provided the

opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties 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 recovery of the filing fee paid for this application?

Are the tenants entitled to additional time to dispute the Notice and, if so, to an order cancelling the Notice?

Background and Evidence

The landlord submitted that this tenancy began in December 2013, with tenants BC, DF, and AW. After this tenancy began, tenant LG moved into the rental unit. The landlord submitted that the monthly rent was \$1350.00, although the 4 tenants pay separately in amounts totalling \$1350.00. The submitted further that there is no written tenancy agreement as one was prepared, but not returned by 1 of the tenants.

The landlord submitted further that he holds a security deposit of \$250.00 for this tenancy.

Landlord's application-

The landlord submitted that he served tenant DF with the Notice on February 11, 2015, by leaving it with this tenant. The Notice listed unpaid rent of \$2900.00 that was due on February 1, 2015 and an effective move-out date of February 21, 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 asserted that since the issuance of the Notice, \$2900.00 in unpaid rent remains, and the landlord attributed this amount owed to tenant DF.

The landlord explained that he believed that the 4 tenants were not co-tenants, that he intended to start a new tenancy with BC and AW after this tenancy was over, and that he wanted the monetary order against tenant DF.

Tenants' application-

The attending tenants offered no dispute to the landlord's claims or application.

Analysis

Landlord's application-

In this case, although the landlord contended that the 4 tenants were not co-tenants, and therefore not jointly or individually liable for the obligations of this tenancy, I find the landlord has treated this tenancy as though a joint tenancy existed, as they filed their application against all 4 tenants and named multiple tenants on the same Notice to end the tenancy. Additionally, I was not presented a written tenancy agreement or agreements which would indicate otherwise.

Residential Tenancy Branch Policy Guideline 13 states that in the absence of clear evidence of a tenancy in common, there is a presumption in law of a joint tenancy.

I therefore accept that for the purposes of this application, the listed tenants were co-tenants.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

I find the landlord submitted sufficient evidence to prove that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, did not pay the outstanding rent or 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.

Therefore, I find the tenancy has ended due to the tenants' failure to pay rent of \$2900.00 and the landlord is entitled to regain possession of the rental unit.

Pursuant to section 55(2) of the Act, I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective 2 days after service upon the tenants. The order of possession is enclosed with the landlord's Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order after it has been served upon them, this 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.

I further find that the landlord is entitled to a monetary award of \$2950.00, comprised of outstanding rent of \$2900.00 and the \$50.00 filing fee paid by the landlord for this application, which I have granted them.

At the landlord's application request, I direct them to retain the tenants' security deposit of \$250.00 in partial satisfaction of their monetary award of \$2950.00, and I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$2700.00, which is enclosed with the landlords' Decision.

Should the tenants fail to pay the landlord this amount without delay after the order has been served upon them, 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.

Tenants' application-

In the case before me, I find the evidence shows that the tenants received the landlord's Notice on February 11, 2015, as confirmed by the tenants in their application and the landlord, and therefore were required to file their application in dispute of the Notice by February 16, 2015; instead the tenants' application was made on February 19, 2015.

In considering the tenants' request to grant additional time to dispute the landlord's Notice, section 66(1) of the *Residential Tenancy Act*, provides that an extension of time can only be granted where the applicant, the tenants in this case, has established that there are exceptional circumstances.

Residential Tenancy Branch Policy Guideline #36 offers examples of exceptional circumstances, such as if the party was in the hospital at all times.

The tenants have offered no proof that this or other exceptional circumstances existed. I therefore dismiss their request for additional time to dispute the Notice.

As I have granted the landlord's application for an order of possession for the rental unit and a monetary order for unpaid rent due to the tenants' failure to pay all rent owed, I dismiss the tenants' application seeking cancellation of the Notice.

Conclusion

The landlord's application has been granted.

The tenants' application seeking cancellation of the landlord's Notice is dismissed without leave to reapply.

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 12, 2015

Residential Tenancy Branch

