



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MND, MNR, FF, CNR

Introduction

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

- an order of possession for unpaid rent pursuant to section 55;
- an order of possession for breach of an agreement with the landlord pursuant to section 55;
- a monetary order for unpaid rent and for damage to the rental unit pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and gave testimony. Both parties confirmed receipt of the notice of hearing packages from one another. On the basis of this evidence, I am satisfied that both parties were duly served with the dispute resolution package pursuant to sections 89 of the Act.

The landlord has confirmed receipt of the tenant's evidence package. The tenant stated that no evidence was received from the landlord. The landlord testified that the landlord's documentary evidence was submitted with the landlord's notice of hearing package when it was sent by Canada Post Registered Mail on March 9, 2015. The tenant disputed this. In reviewing the landlord's documentary evidence, I find that a significant portion of the material is relevant to the claims filed by both parties and that the tenants have also submitted some of the same material. I find on a balance of probabilities that I prefer the evidence of the landlord and that of the tenant was served with the landlord's documentary evidence based upon the similar documentation received from both parties. To assist in the hearing, the tenant was given detailed descriptions of the landlord's material referred to during the hearing. On this basis, I

am satisfied that the landlord and tenants were served with the evidence pursuant to section 88 of the Act.

Preliminary Issue

Section 63 of the Residential Tenancy Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the two parties during the hearing led to a resolution. Specifically, it was agreed as follows:

Both parties agreed to mutually end the tenancy on April 4, 2015, by which time the tenants will have vacated the rental unit..

The above particulars comprise full and final settlement of all aspects of the dispute arising from this application for both parties concerning possession of the rental unit.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and damage?

Is the landlord entitled to recovery of the filing fee?

Is the tenant entitled to recovery of the filing fee?

Background and Evidence

This tenancy began on November 1, 2013 on a fixed term tenancy for one year ending on November 1, 2014 as shown by the submitted copy of the signed tenancy agreement dated November 1, 2013. The monthly rent is \$800.00 payable on the 1st of each month and a security deposit of \$400.00 was paid.

Both parties confirmed that the landlord had served the tenants with a 10 Day Notice issued for Unpaid Rent dated February 21, 2015. The Notice states that the tenant failed to pay rent of \$5,600.00 that was due February 1, 2015 and displays an effective end of tenancy date of March 3, 2015.

The landlord stated that there were no notices issued for unpaid rent save the one dated February 21, 2015 nor were there any rental ledgers or records detailing unpaid rent arrears.

The landlord seeks a monetary claim of \$6,400.00 which consists of unpaid rent of \$400.00 for April 2014, \$400.00 for May 2014, \$400.00 for July 2014, \$400.00 for August 2014, \$400.00 for September 2014 and \$400.00 for October 2014 because of stopped payments on ministry rent cheques, totalling, \$2,400.00. The remaining claim is for unpaid rent of \$800.00 for each month from November 2014 to March 2015 (5 months), totalling, \$4,000.00.

The tenants disputed these claims stating that there are no arrears. The tenants also stated that the Ministry of Social Development (the Ministry) was issuing cheques directly to the landlord, but that after several months of the landlord misplacing the rent cheques and having to stop

payment on several of them, payments were made to the tenants. The tenants stated that cash payments to the landlord began in November of 2014.

The landlord relied on submitted copies of returned cheques from the bank detailing that the "payment stopped" for April 23, 2014, May 27, 2014, and July 23, 2014 and August 27, 2014, of which each payment was for \$400.00.

The tenants disputed these claims referring to submitted documentary evidence from the Ministry showing that the landlord had cashed Ministry cheques for each of the months claimed by the landlord. The tenants also stated that these printouts from the Ministry show that the landlord's "payment stopped" cheques were stopped as per their claim that the landlord kept misplacing them and that they were replaced by the Ministry. The landlord's agent, C.F. could not provide an explanation or clarify the Ministry records for the cashed cheques.

The landlord claimed that the tenants' submitted copies of receipts are forged signatures, except the first one issued in November 2013. The tenants disputed this claim stating that they have never looked that closely at the landlord's signature.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenants failed to pay rent, left the rental dirty requiring cleaning and disposal of junk left.

I find that the landlord has failed to meet his burden of proof to show that the tenants owed rent for the period from April 2014 to February 2015. I reached this conclusion based on the conflicting evidence of the parties as well as the landlord's own lack of knowledge for the rent arrears. The landlord made no dispute as to the tenants' evidence over multiple lost Ministry cheques or the Ministry records showing that the landlord had cashed the rent cheques from the Ministry for those same months. The landlord did not serve the tenants with any 10 Day Notice(s) save the agreed upon Notice dated February 21, 2015, nor has the landlord maintained any record keeping as to the payment of rent (ie, tenant ledger) to accurately record when rent is paid or how much is owed. The landlord's monetary application for a monetary award is dismissed without leave to reapply.

Although the landlord filed an application for damages, the landlord failed to provide any details of the damage claim or the monetary claim sought. The landlord failed to provide any evidence

of damage, that the tenant was responsible for this damage or an actual amount to repair the damage. This portion of the landlord's application is also dismissed.

Conclusion

In order to implement the above settlement reached between the parties, I issue an Order of Possession to be used by the landlord if the tenants fail to vacate the rental premises in accordance with their agreement by 1:00 pm on April 4, 2015. 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 tenants do not vacate the premises by the time and date set out in their agreement. Should the tenants fail to comply with this Order, the Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord's monetary application is dismissed without leave to reapply.

As the landlord has been unsuccessful in his application to establish unpaid rent, the landlord is not entitled to recovery of the filing fee. As both parties have dealt with the substantive applications for possession of the rental unit through mediation and a settlement was reached, I find that the tenants are not entitled to the recovery of their filing fee.

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: April 2, 2015

Residential Tenancy Branch

