



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession, for monetary compensation for damage to the unit site or property, for unpaid rent, to retain the security deposit and to recover the filing fee.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the “hearing package”) by registered mail on June 3, 2015. Based on the evidence of the Landlords, I find that the Tenants were served with the Landlords’ hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlords and the Tenants in attendance.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Is there unpaid rent and if so how much?
3. Is there damage and if so how much?
4. Are the Landlords’ entitled to retain the Tenants’ security deposit?

Background and Evidence

This tenancy started on October 1, 2014. The Parties said there was a written agreement signed by the Landlord’s but not signed by the Tenants. As a result the tenancy is considered a verbal month to month tenancy. The Landlord said the rent is \$1,500.00 per month payable on the 1st day of each month. The Tenants said the rent was due when the Tenants could pay it. This could be the first of the month or later in the month. The Tenants paid a security deposit of \$750.00 in advance of the tenancy. Both Parties agreed that move in condition inspection report was not completed and signed by the parties.

The Landlord said she issued a 1 Month Notice to End Tenancy for Cause dated May 12, 2015 with an effective vacancy date of June 30, 2015. The reasons on the Notice to End Tenancy for Cause are; repeatedly late with the rent, the Landlord believes the

property is at risk and the Tenants have not completed repairs for damage caused to the unit. The Landlord said the rent was late in October and November, 2014 and rent was late in January, February, May and June, 2015. The Landlord continued to say the June, 2015 rent is unpaid and the Landlord has issued a 10 Day Notice to End Tenancy for Unpaid Rent.

Further the Landlord said the Tenants may have damaged the rental unit and they are requesting to retain the security deposit to cover any damages. The Landlord said they do not have possession of the rental unit and the Tenants have denied them access so they don't know what potential damage there is.

In addition the Landlords said they have had many complaints from neighbours about the lack of maintenance of the rental property including the yard care.

The Landlord said they want to end the tenancy as soon as possible.

The Tenant said the Landlord agreed to accept the rent payment at various time because her husband works in camps and it is difficult to get the money into their account by the first as he is paid at different times in the month. The Tenant said the Landlord was aware of this and agreed to it. The Tenant continued to say that some of the rent payments were later in the month as one cheque was returned NSF and 3 other rent payment cheques had stop payments put on them. The Tenant said they paid the June, 2015 rent with cash and the Landlord would not give them a receipt.

The Tenant said that they have not damaged the rental unit and the Landlord has not repaired many things that are broken in the unit. This included two outside doors that do not close making the unit unlockable and therefore unsafe. As well the Tenant said the heat has not worked in the house for 6 month and the Landlord has done nothing to fix it. The Tenant said they have not filed an application for repairs or for compensation for repairs but they plan to make an application in the future.

The Tenant provided a witness N.F. (the female Tenant's mother) who gave affirmed testimony that she believed the female Landlord and the female Tenant signed the tenancy agreement. The Tenant said she submitted the first page of the tenancy agreement but she did not think it was important so she did not send in the remaining 5 pages of the tenancy agreement. As well the witness said the Landlord agreed to the rent being paid at various times and there was no damage to the rental unit caused by the Tenants. The witness also confirmed the rental unit had no heat for the last 6 months.

The Landlord had no questions for the witness.

The male Tenant said he paid the Landlord cash for the June, 2015 rent and the Landlord would not give him a receipt. The Landlord said the June rent was not paid and that is why they issued a 10 Day Notice to End Tenancy for Unpaid Rent. The male Tenant also said the rent was payable on the first day of the month in the tenancy

agreement, but they had a verbal arrangement with the Landlord to pay later in the month if needed.

The Tenants said in closing that rent was paid as agreed, there was no heat in the unit for the last 6 months, the Landlord would not give receipts, there is no unpaid rent and the Tenants said they want to move out of the rental unit by the end of the month.

The Landlords said in closing that they want to end the tenancy at the end of the month the rent has been late many times and the Tenants have not maintained the rental unit or the yard. The Landlord requested unpaid rent of \$1,500.00, to retain the security deposit for estimated damages and an order of possession to end the tenancy effective on June 30, 2015.

Analysis

I have heard and reviewed the evidence and testimony regarding the tenancy information and although the Tenant did not submit the complete tenancy agreement, I prefer the Landlord's testimony of what the tenancy agreement contained. As well the Landlord's evidence was in part corroborated by the Tenants witness who said she thought the female parties had signed the tenancy agreement and the male Tenant said the tenancy agreement stated the rent was due the first of each month. I find on the balance of probabilities the tenancy agreement indicates rent was \$1,500.00 to be paid on the first day of each month. This is a normal arrangement and as there is no other written agreement as to when rent was to be paid; I find the rent was due on the first of each month.

Section 47(b) of the Act says a landlord may end a tenancy by giving a notice to end tenancy if the Tenants are repeatedly late with rent payments.

Section 26(1) says of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Further The Landlord provided testimony and bank documents as evidence that the Tenant has been late with the rent payment more than 3 times, which under the Residential Tenancy Policy guideline # 38 is grounds to end the tenancy. As well the Tenant agreed they had one NSF and they put stop payments on three other rent payments. I find that the Landlord has established grounds to prove multiple late rent payments.

The Tenant does not have the right to withhold all or a portion of the rent from the Landlord when it is due therefore; I find the Tenant have been late with the rent payment on October and November, 2014 and January and February, 2015. As well I accept the Landlord's testimony that the June 2015 rent is not paid in the amount of \$1,500.00. Consequently, I find pursuant to s. 55 of the Act that the Landlord is entitled to an Order of Possession to take effect June 30, 2015.

Further I find that the Landlord is entitled to a monetary claim for unpaid rent for June, 2015 in the amount of \$1,500.00.

The damage claims made by the Landlord are only estimates so the Landlord has not proven an actual loss nor can verify that loss therefore I dismiss the Landlords' damage claim with leave to reapply.

I also find that as the Landlord was successful in this matter they are entitled to recover the filing fee of \$50.00 for this proceeding from the Tenants. I order the Landlord pursuant to section 38 and 72 of the Act to retain the Tenants' security deposit as partial payment of the unpaid rent. A monetary order for the balance owing has been issued to the Landlord as below:

	Unpaid rent	\$ 1,500.00	
	Filing fee	\$ 50.00	
	Sub total		\$1,550.00
Less:	Security Deposit	\$ 750.00	
	Sub total		\$ 800.00

Conclusion

An Order of Possession effective June 30, 2015 at 1:00 p.m. and a Monetary Order in the amount of \$800.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: June 23, 2015

Residential Tenancy Branch

