



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's Application: OPB, OPR, OPC, MND, MNR, MNSD, FF, O

Tenants' Application: CNR, OLC, PSF, LRE, RR, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by both the Tenants and the Landlord.

The Landlord applied for the following reasons: for an Order of Possession on the basis that the Tenants have breached an agreement with the Landlord, for cause, and for unpaid rent; for a Monetary Order for damage to the rental suite and unpaid rent; to keep the Tenants' security and pet damage deposit; to recover the filing fee from the Tenants; and, for "Other" issues.

The Tenants applied for the following reasons; to cancel the notice to end tenancy for unpaid rent; for the Landlord to comply with *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; for the Landlord to provide services or facilities required by law; to suspend or set conditions on the Landlord's right to enter the rental unit; to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided; and, to recover the filing fee from the Landlord.

Preliminary Issues

Both parties appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. The parties confirmed receipt of each other's Application and evidence which had been submitted within the timelines stipulated by the Residential Tenancy Branch Rules of Procedure. However, I noted that the Tenants had submitted a second bundle of late evidence on June 26, 2015 which was only made available to me after this hearing had been conducted. As this submission of evidence had been submitted late and was not before at the time of the

hearing, and there was not sufficient evidence to show it had been served to the Landlord, I have not considered this evidence in order to make my decision in this matter.

The Landlord confirmed that he had not served the Tenant with a 1 month notice to end tenancy for cause despite electing to deal with this issue on his Application. The Landlord stated that this “cause” related to the breach of the agreement by the Tenants and unpaid rent. Therefore, I dismissed this portion of the Landlord’s Application.

Rule 2.3 of the Rules of Procedures sets out that in the course of the dispute resolution proceeding, the Arbitrator may use their discretion to dismiss unrelated claims contained in a single Application with or without leave to re-apply. As a result, I only dealt with the Landlord’s Application for an Order of Possession for unpaid rent and for breach of the agreement, and the Tenants’ Application to cancel the notice to end tenancy for unpaid rent. In addition, I also dealt with the Landlord’s monetary claim for unpaid rent and to keep the Tenants’ security deposit in partial satisfaction of unpaid rent as these were related issues. The remainder of the parties’ Applications were not dealt with during this hearing as these were not sufficiently related. Therefore, these issues were dismissed with leave to re-apply as determined below.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present evidence which met the Rules of Procedure, make submissions to me, and cross examine the other party. I have considered the evidence provided by the parties in this case on the issues to be decided, but I have only documented the evidence which I relied upon to make my findings in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to cancel the notice to end tenancy for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep the Tenant’s security and pet damage deposits (the “Deposits”) in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The parties agreed that this tenancy started on July 1, 2013 for a fixed term until May 1, 2014. The parties engaged into a new tenancy agreement which then started on May 1,

2014 to expire on October 31, 2014. The parties then signed another fixed term agreement on October 15, 2014 which started on November 1, 2014 and expired on April 30, 2015; a copy of this agreement was provided into written evidence and states that at the end of April 30, 2015 the tenancy will end and the Tenants must vacate the rental unit; both parties initialed this provision of the residential tenancy agreement.

The parties agreed that rent for this tenancy was in the amount of \$1,200.00 payable on the fifth day of each month. The Tenants paid the Landlord \$600.00 as a security deposit and \$100.00 as a pet damage deposit on August 20, 2013, which the Landlord still retains.

The Landlord testified that he was seeking an Order of Possession because the Tenants had failed to vacate the rental unit at the end of April 2015 in accordance with the fixed term tenancy agreement that required them to do so. The Landlord testified that he had informed the Tenants prior to the ending of the tenancy that he would not be renewing the tenancy and they would be required to move out of the rental unit by the agreed date on the tenancy agreement.

The Landlord testified that after he explained this to the Tenants they became abusive towards him and informed him that they would not be moving out on the date of the tenancy agreement and that they would not be paying rent.

The Landlord testified that after April 30, 2015, the Tenants failed to vacate the rental unit and did not pay any rent. The Landlord testified that he wanted the Tenants out but he was also out of money for rent as well. As a result, the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on May 6, 2015, the day after rent was due. The Landlord explained that he had no intention of re-instating the tenancy past the date on the written tenancy agreement by accepting rent. As a result, the Landlord wrote on the Notice that it was being issued to the Tenants for use and occupancy only. The Notice was provided into evidence and shows an effective vacancy date of May 16, 2015 due to \$1,200.00 due on May 5, 2015.

The Landlord confirmed that the Tenants did not pay any rent for May or June 2015 and as a result now claims for lost rent in the amount of \$2,400.00 as well as an Order of Possession to end the tenancy immediately.

The female Tenant testified that the Landlord had been informed in writing at the end of December 2014 about mold issues that were alleged to be present in the rental unit. However, the Landlord failed to provide remedy to them and is now seeking to end the tenancy because he does not want to deal with the alleged mold remediation work.

In respect to the fixed term tenancy agreement, the Tenants argued that the Landlord had renewed previous tenancy agreements with them without any problems and they assumed that this would still be the case when the current tenancy agreement dated October 15, 2014 was to expire. The male Tenant testified that the Landlord provided them with two weeks notice that he was not going to renew the tenancy agreement and that the Landlord should have given proper notice to end the tenancy.

The Tenants acknowledged receipt of the Notice on May 6, 2015 and confirmed that they had not paid rent for May and June 2015 in the amount of \$2,400.00.

Analysis

Section 44 of the Act stipulates how a tenancy ends. In particular, Section 44 (1) (b) of the Act states that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy.

Based on the foregoing, I find that the tenancy agreement signed and dated on October 15, 2014 by the parties provided that the tenancy was to end on April 30, 2015 and the Tenants were required to move out on this date.

Notwithstanding the Tenants' arguments that they were verbally led to believe that the tenancy was going to be renewed by the Landlord, in such a case, there is no requirement on either the Landlord or the Tenant to provide written notice to end the tenancy. Neither does the Act specify a requirement on the parties of a deadline to come to agreement on whether the fixed term tenancy is going to end or continue.

The residential tenancy agreement signed by both parties clearly stipulates the end of tenancy date and requires the parties to initial this provision of the agreement in an effort to highlight to both parties the exact nature of the agreement being entered into.

In addition, the obligation of the parties in relation to the renewal of the fixed term tenancy agreement is a joint obligation that must be resolved by both parties before the expiry of the signed tenancy agreement. If the parties are unable to come to a mutual agreement and secure a new written tenancy agreement before the fixed term ends, then the current signed tenancy agreement takes full effect under the Act.

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not the landlord complies with the Act, unless the tenant has authority to withhold or deduct rent.

In this case, the Tenants acknowledged that they had not paid rent for May and June 2015. I find that despite the fact that the Tenants had disputed the Notice, the Tenants disclosed no authority to withhold rent for the two months claimed by the Landlord.

Based on the foregoing, I find the Tenants have breached the written tenancy agreement by over holding the tenancy past April 30, 2015 and have failed to pay rent in accordance with the Act. As a result, I find that the Landlords are entitled to an Order of Possession effective two days after service on the Tenants. This order must be served to the Tenants and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenants fail to vacate the rental unit.

I also find that the Landlord is entitled to unpaid rent in the amount of **\$2,400.00**. As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$50.00** Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is **\$2,450.00**.

As the Landlord already holds **\$700.00** of the Tenants' Deposits, I order the Landlord to retain this amount in partial satisfaction of the claim awarded. As a result, the Landlord is awarded a Monetary Order for the outstanding balance of **\$1,750.00**. This order must be served on the Tenants and may then be enforced in the Provincial Court (Small Claims) as an order of that court if the Tenants fail to make payment.

As the Tenants have failed to cancel the notice to end tenancy, I dismiss their claim to recover the filing fee from the Landlord. In relation to the remainder issues on the Tenants' Application, I find that as the tenancy has now ended, the remaining issues are now moot.

Therefore, I dismiss the remainder of the Tenants' Application; however, in relation to the Tenant's Application for a reduction in rent for repairs, services or facilities agreed upon but not provided, I find that the Tenant's claim in this respect disclosed monetary compensation for alleged mold issues during the tenancy. As I did not hear any evidence in respect to this issue, the Tenants are not barred from making a monetary claim for this through a new Application.

Conclusion

The Tenants have breached the fixed term end date of their tenancy agreement and have not paid rent. As a result, the Landlord is granted an Order of Possession effective two days after service on the Tenants.

The Landlord is allowed to keep the Tenants' security deposit and is issued with a Monetary Order for the remaining balance of \$1,750.00 for unpaid rent and the filing fee. The Landlord's Application for damages to the rental unit and "Other" issues is dismissed with leave to re-apply as these matters were not determined in this hearing.

The Tenants' Application is dismissed without leave to re-apply. However, the Tenants are still at liberty to pursue a monetary claim against the Landlord.

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 29, 2015

Residential Tenancy Branch

