



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC O FF

Upon review of the Landlords' application for dispute resolution the Landlords wrote the following in the details of the dispute:

Tenancy terminated March 31, 2015 & lease contained vacancy clause in section 2 b (ii). Tenant has not vacated & landlord requires an order for possession. Landlord claims \$9000 for use & occupancy monies owing plus \$3,000 for outstanding utilities.

[Reproduced as written]

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the boxes for: *seeking an Order of Possession for the reason the tenant has breached an agreement with the landlord and for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to recover the payment for occupancy and utilities for a period after the tenancy ended. Therefore, I amend the Landlords' application to include the request for *an Order of Possession and for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlords on May 15, 2015, seeking to obtain an Order of Possession and a Monetary Order for: unpaid Utilities; damage or loss under the Act, regulation, or tenancy agreement; for other reasons, and to recover the cost of the filing fee from the Tenants for this application.

The hearing was conducted via teleconference and was attended by the Landlords' agent and both Tenants. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask

questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Section 1 of the Act defines a landlord in relation to a rental unit, to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

Based on the above, I find the Landlords' Agent meets the definition of Landlord, pursuant to the act; therefore, for the remainder of this Decision the Agent will be referred to as Landlord. As there were two other Landlords named as applicants to this dispute, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise

The Tenants confirmed receipt of the Landlords' application for Dispute Resolution, the hearing documents, and the Landlords' evidence. The Tenants testified that they did not submit documentary evidence in response to this application.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Are the Landlords entitled to an Order of Possession?
2. Have the Landlords proven entitlement to monetary compensation for unpaid utilities and money owed in accordance with the Act, regulation or tenancy agreement?

Background and Evidence

It was undisputed that the Tenants have occupied the rental unit since October 10, 2013, and have entered into two written fixed term tenancy agreements. The first agreement was for the period of August 10, 2013 to August 31, 2014. The last written tenancy agreement began on October 1, 2014 and was scheduled to end on March 31, 2015 at which time the Tenants were required to vacate the property. Rent was payable on the first of each month in the amount of \$4,500.00. On August 10, 2013 the Tenants paid \$2,250.00 as the security deposit plus \$2,250.00 as the pet deposit. The Tenants

remain in possession of the rental unit and have been making payments to the Landlords for use and occupancy.

The Landlord testified that the Tenants were advised, prior to the end of their written tenancy agreement, that the Landlords would not be entering into another agreement and the Tenants would be required to vacate the rental unit. The Tenants have continued to occupy the rental unit and currently owe the Landlord monies for use and occupancy in the amount of \$12,500.00 up to the end of July 2015. The Landlord submitted that amount owed for occupancy is comprised of \$3,500.00 for May 2015, \$4,500.00 for June 2015, plus \$4,500.00 for July 2015 based on a daily rate of \$150.00 per day.

The Landlord also seeks compensation for the unpaid municipal utility bill in the amount of \$3,085.90 which is comprised of \$2,552.90 supported by actual invoices from August 10, 2013 to March 31, 2015 and estimated amounts for the period of April 1, 2015 to July 31, 2015 of \$533.00.

To support the claim for utilities, the Landlord pointed to item (6) on the tenancy agreement addendum which states:

6. UTILITIES & OPERATING COSTS: The Tenant(s) agree to pay for electricity, gas, telephone, cablevision, internet and water and sewer consumption. The Landlord(s) agree to pay for the property taxes and a seasonal gardening service

[Reproduced as written]

The Tenants testified that the Landlord's submissions were accurate. They have remained in possession of the rental unit and they both agree that they owe money for use and occupancy as well as for unpaid municipal utilities. They do however, dispute the amount owed for the municipal utilities as there were previous problems with a leaky garburator and leaky kitchen tap. They are of the opinion that the water bill was 20% to 25% higher than it should be due to the leaky tap and garburator.

The Tenants confirmed that the Landlords had previously given copies of the municipal utility bills and requested payment at that time. They argued that the first time they received a bill was back in approximately January 2015 which surprised them that it was not provided on a quarterly basis.

The Tenants submitted that this situation was the result of their financial problems and that they have remained in the rental unit because they have not been able to find a suitable place to move to.

In closing, the Landlord submitted that the owners are in need of immediate possession of the rental unit and payment of the monies owed to them.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

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

In this case the tenancy agreement did specify the Tenants were required to vacate the rental unit at the end of the tenancy which was March 31, 2015. Accordingly, I find this tenancy ended on **March 31, 2015**, pursuant to section 44(1)(b) of the *Act*. Accordingly, the Landlords are entitled to possession of the rental unit as the tenancy has end. Therefore, I grant the Landlords' request for an Order of Possession, effective two days upon service to the Tenants.

Residential Tenancy Policy Guideline 3 provides that a tenant is not liable to pay rent after a tenancy agreement has ended pursuant to this provision; however, if a tenant remains in possession of the premises (over holds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises.

The Landlords have claimed payment for use and occupancy in the amount of \$12,500.00 calculated at a daily rate of \$150.00 per day for the period of May 2015 to July 31, 2015. The Tenants did not dispute the amount claimed by the Landlords, if they were to remain in possession of the rental unit until July 31, 2015.

Based on the foregoing, and in consideration that the Landlord will not regain possession of the rental unit until they receive and serve the Order of Possession, I grant the Landlords' claim for use and occupancy of the rental unit at the undisputed daily rate of \$150.00 which includes the \$3,500.00 balance owed for May 2015,

\$4,500.00 for June 2015, plus \$900.00 up to and including Monday July 6, 2015 (6 x \$150.00) for the amount of **\$8,900.00**.

In addition to the amounts awarded above, if the Tenants remain in possession of the rental unit past July 6, 2015, the Landlords are granted leave to file another application for any additional losses for use and occupation they may suffer.

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

As listed above, it was undisputed that the tenancy agreement and addendum stipulated that the Tenants were required to pay the costs for utilities which include the costs for water and sewer consumption.

Notwithstanding the Tenants submission that they should not have to pay the full amount owed for water, in absence of documentary evidence to prove there was a leak or to prove the Tenants took reasonable action to have the leak repaired to limit the cost of the water bill, I find there was insufficient before me to prove the Tenants were entitled to any reduction in the actual amounts billed by the municipality.

The Landlords` claim for3 \$3,085.90 for the municipal utilities included estimated amounts for the period of April 1, 2015 to July 31, 2015 in the amount of \$533.00. Actual invoices had been submitted into evidence covering the periods of both tenancy agreements from August 10, 2013 to March 31, 2015 which total \$2,552.90. I accept the undisputed evidence that the Landlord had previously submitted invoices and demands for payment to the Tenants and the amounts remained unpaid. Therefore, I find the Landlords have met the burden of proof to establish their claim for unpaid utilities during the tenancy agreement in the amount of **\$2,552.90**.

As Indicated above, the remaining amount claimed of \$533.00 was based on estimated amounts, not actual usage, for periods after the tenancy had ended. Accordingly, I dismiss the claim for \$533.00, without leave to reapply, due to insufficient evidence of the actual amount owed. .

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has primarily succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the Act.

Conclusion

The Landlords have primarily succeeded with their application and have been granted an Order of Possession effective **Two (2) Days after service upon the Tenants**. In the event that the Tenants do not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

The Landlords have been awarded a Monetary Order for **\$11,552.90** (\$8,900.00 + \$2,552.90 + \$100.00). This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: July 03, 2015

Residential Tenancy Branch

