



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: OPR MNR FF
For the tenants: CNR

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlords applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”).

Tenant A.W., and the landlords attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

Preliminary and Procedural Matters

The landlords testified that they were not aware that the tenant had made an application for dispute resolution as they have never received documents from the tenant indicating that she had filed an application. The tenant testified that she served the Notice of Hearing document on the landlord by posting to their door, which is not an approved method of service the Notice of Hearing under section 89(1) of the *Act*. As a result, the tenant’s application was dismissed with leave to reapply due to a service issue. As a result, the hearing continued with consideration of the landlords’ application only as the tenant confirmed that she was served with their documents and had reviewed them.

The landlords testified that in addition to the rent owed for June 2015, the tenants have subsequently not paid rent for July 2015. As a result, the landlords were seeking \$2,400. The landlords also stated that the tenants continue to occupy the rental unit. As this request to amend the application does not prejudice the respondent tenants as the tenants would be

aware that rent is due pursuant to the tenancy agreement, I amend the application to \$2,400 in unpaid rent/loss of rent pursuant to section 64(3)(c) of the *Act*.

During the hearing, the tenant was cautioned for interrupting the other party and the Arbitrator. After being cautioned, the tenant continued to interrupt and was advised that if she continued to interrupt, she would be placed on hold for the remainder of the hearing. Based on the tenant's testimony, I determined that I did not need to hear from the tenant's witness as the tenant confirmed that rent was not paid by way of an e-Transfer, and then contradicted herself shortly thereafter.

Issues to be Decided

- Are the landlords entitled to an order of possession based on the 10 Day Notice dated June 3, 2015 under the *Act*?
- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- Are the landlords entitled to the recovery of the cost of their filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on April 24, 2014. Monthly rent in the amount of \$1,200 is due on the first day of each month. The tenant testified that rent was not due on the first day of the month, however, when reviewing page two of the tenancy agreement together during the hearing, the tenant stated that she did see "1st" written on the tenancy agreement and immediately changed her testimony and confirmed that in fact rent was due on the first day of each month.

The parties agreed that the landlords have a security deposit of \$600 from the tenants which was paid at the start of the tenancy.

The landlords are claiming \$2,400 for unpaid rent, comprised of \$1,200 owing in unpaid rent for June 2015, plus \$1,200 owing in unpaid rent for the month of July 2015 as the tenants continue to occupy the rental unit.

When the tenant was asked if they paid rent for June and July of 2015, the tenant replied "no". The tenant then later changed her testimony and once the landlords indicated that all other rent had been paid by e-Transfer, the tenant testified that they tried to pay by e-Transfer but the landlords refused the payments, which the landlords disputed.

The tenant provided no documentary evidence to support that an attempt to make an e-Transfer payment was made.

The 10 Day Notice dated June 3, 2015 indicates that \$1,200 was owed as of June 1, 2015 and lists an effective vacancy date as June 15, 2015. The landlords verbally requested an order of possession during the hearing.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

I prefer the evidence of the landlords over that of the tenant as the tenant provided contradictory and inconsistent testimony during the hearing, while the landlords' testimony was consistent with their claim. The tenant first claimed that no rent was paid for June and July 2015, and then claims that the landlords refused rent which I do not accept and find highly unreasonable when rent for two months were owed to the landlord and the tenants continue to occupy the rental unit.

Furthermore, the tenant claimed at the outset of the hearing that rent was not due on the first day of each month and then later changed her testimony to confirm that indeed rent was due on the first day of each month.

Order of Possession – Based on the above, I find the landlords have provided sufficient evidence to prove the 10 Day Notice is valid. I uphold the 10 Day Notice dated June 3, 2015 as a result. As the effective date of the 10 Day Notice, July 15, 2015 has passed and the tenants continue to occupy the rental unit and pursuant to section 55 of the *Act*, **I grant** the landlords an order of possession effective **two (2) days** after service on the tenants. I find the tenancy ended on June 15, 2015 and that the tenants have been overholding in the rental unit for the month of July.

Claim for unpaid rent/loss of rent – I find that rent of \$2,400 remains owing, comprised of \$1,200 for unpaid June 2015 rent, plus a loss of rent for the month of July 2015. Pursuant to section 26 of the *Act*, tenants must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. The tenants continue to occupy the rental unit. The landlords will not regain possession of the unit until after service of the order of possession. I find the landlords have met the burden of proof and **I find** the landlords have established a monetary claim of **\$2,400** as claimed.

As the landlords have succeeded with their application, **I grant** the landlords the recovery of their **\$50** filing fee.

Monetary Order – **I find** the landlords have established a total monetary claim of **\$2,450**, comprised of \$2,400 in unpaid rent and loss of rent, plus the \$50 filing fee.

I ORDER the landlords to retain the tenants' full security deposit of \$600 in partial satisfaction of the landlords' monetary claim. **I grant** the landlords a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlords in the amount of **\$1,850**. This order is made in accordance with section 72 of the *Act*.

Conclusion

The tenants' application to cancel the 10 Day Notice is dismissed with leave to reapply due to a service issue; however, such an application would now be moot given that I have ordered the tenancy has ended on June 15, 2015 based on the landlords' successful application before me.

The landlords have been granted an order of possession effective two (2) days after service on the tenants. The tenants must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlords have proven a monetary claim of \$2,450 and have been ordered to retain the tenants' full \$600 security deposit in partial satisfaction of the landlords' monetary claim. The landlord has been granted a monetary order for the balance owing by the tenants to the landlords in the amount of \$1,850. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 24, 2015

Residential Tenancy Branch

