Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF
CNR ERP RP LRE LAT O

Preliminary Issues

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

> *The Tenants (Tenant's names listed) have failed to pay damage deposit of $300.00 + hydro for 9 months = $642.74 moved in – Sept. 204. Plus rent for the month of June $600.00.*
>
> [Reproduced as written]

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *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 after service of the 10 Day Notice and for money other than rent or utilities. Therefore, I amend the Landlord's application to include the request 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 cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed on June 3, 2015, seeking an Order of Possession for unpaid rent and utilities, and a Monetary Order for: unpaid rent and utilities; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed on June 01, 2015, seeking an Order to cancel the 10 Day Notice to end tenancy; to Order the Landlord to make repairs to the unit, site, or property; to make emergency repairs for health or safety reasons; to allow the Tenants to change the locks to the rental unit; to suspend or set conditions on the Landlord's right to enter the rental unit; and other reasons.

The hearing was conducted via teleconference and was attended by the Landlord. No one was in attendance on behalf of the Tenants. The Landlord provided affirmed

testimony that the Tenants were served notice of her application and this hearing by registered mail on June 4, 2015. The Landlord confirmed that only one envelope was sent via registered mail listing both Tenants' names. The tracking information was submitted in the Landlord's testimony. Canada Post tracking information indicated that the male Tenant, T.H. signed receipt of the package on June 22, 2015.

Section 89(1) of the *Residential Tenancy Act* stipulates how an application for dispute resolution must be served to the respondent as follows:

> **89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
>
> (a) by leaving a copy with the person;
> (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
> (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
> (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
> (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

The Residential Tenancy Rules of Procedure 3.1 determines the method of service for hearing documents and stipulates that the applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve **each** respondent with copies of the application and all hearing documents in accordance with the Act.

In this case only one package was sent registered mail and was addressed to both Tenants. The male Tenant was the person who signed for the package; therefore, in absence of the Tenants there was no evidence before me to prove the female Tenant was served a copy of the Landlord's application and hearing documents. Therefore, I find that the application against both Tenants must be amended to include only the male Tenant, T.H. as he was the one who has been properly served with Notice of this Proceeding. As there was no evidence that the second Tenant, G.G. had been properly served the Application for Dispute Resolution as required, the claim against G.G. is dismissed without leave to reapply.

The Landlord confirmed receipt of the Tenants' application and notice of hearing documents. No one appeared at the teleconference hearing on behalf of the Tenants; despite the male Tenant being served with notice of the Landlord's application in accordance with the Act and despite the Tenants having their own application for dispute resolution scheduled for the same hearing date and time. Accordingly, I proceeded in the absence of the Tenants.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to an Order of Possession?
2. Has the Landlord proven entitlement to a Monetary Order against T.H.?
3. Should the Tenant's application be dismissed with or without leave to reapply?

Background and Evidence

The Landlord testified that the Tenants entered into a verbal tenancy agreement which began in early September 2014. Rent was payable on the first of each month in the amount of $600.00 and the Tenants were required to pay for the hydro utility. The Tenants were required to pay a security deposit of $300.00; however, no payment was ever made towards the security deposit.

The Landlord submitted that when the Tenants failed to pay their April 2015 rent in full she personally served them with a 10 Day Notice to end tenancy for unpaid rent. As of the hearing date the Tenants owed $600.00 for May 2015, $600.00 for June 2015, $300.00 for the Security Deposit, and $642.74 for utilities.

The Landlord asserted that when the hydro bill was received every other month she would take the original bill to the Tenant and would request payment. When the Tenant did not pay the bill she would retrieve the original. Then on June 2, 2015 she served the Tenants with a written demand for the unpaid utilities of $642.72 along with copies of each bill. She argued that the Tenants have not made any payments towards the outstanding hydro bills.

The Landlord stated that when she checked the house on June 30, 2015 the Tenants were still occupying the rental unit. When she returned on July 10, 2015 they were moved out. She submitted that she has not regained possession as she was waiting to find out the result of this hearing as the Tenants had disputed the 10 Day Notice and because the Tenants have not returned the keys for the rental unit. As a result she is also seeking to recover the loss of rent for July 2015.

Analysis

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

The *Residential Tenancy Act* defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.Common law has established that oral contracts and/or agreements are enforceable.

Therefore, based on the above, I find that the undisputed terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

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.

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Landlord's Application

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends. In this case the Tenants received the 10 Day Notice on May 26, 2015; therefore, the effective date of the Notice was **June 5, 2015**.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

The Tenants filed an application to dispute the Notice; however, no evidence was submitted to support their application to cancel the 10 Day Notice. Rather, the undisputed evidence was the Tenants failed to pay their rent in accordance with their tenancy agreement in breach of section 26 of the Act.

The Landlord claimed unpaid rent of $1,200.00 comprised of $600.00 due May 1, 2015, plus $600.00 due June 1, 2015 in accordance with section 26. Based on the aforementioned undisputed evidence, I award the Landlord unpaid rent for May and June 2015, in the amount of **$1,200.00.**

As noted above this tenancy ended **June 5, 2015,** in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for loss of rent for July 2015 and not rent. The Landlord was prevented from regaining possession of the unit until after this hearing due to the Tenant's application to dispute the 10 Day Notice, their failure to advise the Landlord that they were not returning to the rental unit, in addition to the Tenant's failure to return the keys to the Landlord. Therefore, the Landlord will not regain possession of the rental unit until she receives the Order of Possession and will have to ready the unit and search for a replacement tenant. Therefore, I award the Landlord loss of rent for the entire month of July 2015, in the amount of **$600.00**.

The undisputed evidence was that the tenancy agreement required the Tenants to pay for hydro costs and the Tenants currently owed $642.74 for hydro. Accordingly, I grant the Landlord's application and award her hydro costs of **$642.74**.

Section 20(a) of the Act stipulates that a landlord must not require a security deposit at any time other than when the landlord and tenant enter into a tenancy agreement.

In this case the Landlord had requested the Tenants pay a security deposit at the beginning of the tenancy. However, when the Tenants failed to pay the deposit the Landlord did not take immediate action to collect it by serving the Tenants a 1 Month Notice to end tenancy. This tenancy has now ended; therefore the Landlord is no longer entitled to request a security deposit be paid, pursuant to section 20(a) of the Act.

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 succeeded with their application; therefore, I award recovery of the **$50.00** filing fee, pursuant to section 72(1) of the Act.

Tenants' Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing.

Rule 10.1 of the Rules of Procedure provides as follows:

> **10.1 Commencement of the hearing** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the applicant Tenants, the telephone line remained open while the phone system was monitored for thirty minutes and no one on behalf of the applicant

Tenants called into the hearing during this time. Accordingly, in the absence of any submissions from the applicant Tenants, I order the Tenants' application dismissed, without liberty to reapply.

Conclusion

I HEREBY DISMISS the Tenants' application, without leave to reapply.

The Landlord's application has been amended and the claim against G.G. has been dismissed without leave to reapply. The Landlord's application was successful against T.H.

The Tenants have already abandoned the rental unit; therefore I grant the Landlord an Order of Possession effective **immediately** upon receipt of this Decision and the enclosed Order.

The Landlord has been issued a Monetary Order for unpaid rent, loss of rent, unpaid hydro utilities, and the filling fee in the amount of **$2,492.74** ($1,200.00 + $600.00 + $642.74 + $50.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the 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 20, 2015

Residential Tenancy Branch