



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPL, MND, MNR, MNDC, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent and for landlords' use of property, pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlord, CG ("landlord") and the tenant, SB ("tenant") attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. The landlord had an English language interpreter, OB, assist her at this hearing. The landlord confirmed that she had authority to represent her husband, "landlord JG," the other landlord named in this application, as an agent at this hearing. The tenant confirmed that she had authority to represent her son, "tenant CB," the other tenant named in this application, as an agent at this hearing.

The tenant testified that she received the landlords' application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlords' Application.

The tenant testified that she received the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 10, 2015 ("10 Day Notice"), on the same date. The notice indicates an effective move-out date of June 20, 2015. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlords' 10 Day Notice on June 10, 2015.

The tenant testified that she received the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property, dated June 10, 2015 ("2 Month Notice"), on the same date. The notice indicates an effective move-out date of August 1, 2015. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlords' 2 Month Notice on June 10, 2015.

Preliminary Issues – Amendment of Landlords' Application

During the hearing, the landlord withdrew the landlords' Application for a monetary order for damage to the rental unit. Accordingly, this portion of the landlords' Application is withdrawn.

At the outset of the hearing, the landlord asked to amend the landlords' Application to increase the monetary order sought from \$1,650.00 to \$2,475.00. The landlord stated that the landlords initially applied for unpaid rent for June and July 2015, totalling \$1,650.00, but that unpaid rent had increased to \$2,475.00 because August 2015 rent was unpaid too. The tenant opposed this amendment. However, during the hearing, the tenant agreed that the tenants had not paid rent for June, July or August 2015, totalling \$2,475.00. Both parties also agreed to settle all issues regarding outstanding rent, including for August 2015, in their settlement agreement as outlined below. Therefore, I amend the landlords' Application, pursuant to my authority to do so under section 64(3)(c) of the *Act*, to increase the landlords' monetary claim to \$2,475.00 to include August 2015 rent.

Issues to be Decided

Are the landlords entitled to an order of possession for unpaid rent or for landlords' use of property?

Are the landlords entitled to a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord testified that this month-to-month tenancy began on May 1, 2011. Both parties agreed that monthly rent of \$825.00 is payable on the first day of each month. A security deposit of \$400.00 was paid by the tenants and the landlords continue to retain this deposit. The tenants continue to reside in the rental unit.

The landlord testified that the landlords issued the 10 Day Notice indicating that rent of \$825.00 was due. Both parties agreed that rent of \$825.00 for each month from June to August 2015 is unpaid, totalling \$2,475.00. The landlord seeks a monetary order for unpaid rent in the amount of \$2,475.00 plus the \$50.00 filing fee for this Application.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on September 15, 2015, by which time the tenants and any other occupants will have vacated the rental unit;
2. The tenants agreed to pay the landlords \$1,650.00 by August 25, 2015 and the landlords agreed that this amount satisfies any rent owed for this tenancy until September 15, 2015;
3. The landlords will retain the tenants' entire security deposit of \$400.00 and the landlords understand the consequences of doing so prior to the end of this tenancy;
4. The landlords agreed to withdraw their application to recover the \$50.00 filing fee from the tenants.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final and binding and enforceable, which settle all aspects of this dispute. Both parties agreed that they were aware that they were making this agreement also as agents on behalf of the other two individuals who were not present at this hearing, landlord JG and tenant CB.

Conclusion

To give effect to the settlement reached between the parties, and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the

landlords **only** if the tenants and any other occupants fail to vacate the rental premises by 1:00 p.m. on September 15, 2015. The landlords are provided with this Order in the above terms and the tenant(s) must be served with this Order in the event that the tenants and any other occupants fail to vacate the rental premises by 1:00 p.m. on September 15, 2015. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

To give effect to the settlement reached between the parties, I order the landlords to retain the tenants' entire security deposit of \$400.00.

In order to implement the above settlement reached between the parties and as advised to both parties during the hearing, I issue a monetary Order in the landlords' favour in the amount of \$1,650.00. I deliver this Order to the landlords in support of the above agreement for use **only** in the event that the tenants fail to abide by condition 2 of the above settlement agreement. The landlords are provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order in the event that the tenants fail to abide by condition 2 of the above settlement agreement. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlords' 10 Day Notice, dated June 10, 2015, is cancelled and of no force or effect. The landlords' 2 Month Notice, dated June 10, 2015, is cancelled and of no force or effect. The landlords' Application to recover the \$50.00 filing fee is withdrawn. The landlords must bear the cost of their own filing fee. The landlords' Application for a monetary order for damage to the rental unit, is withdrawn.

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: August 19, 2015

Residential Tenancy Branch

