



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: OPR, FF
 Tenants: MT, CNR, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlords sought an order of possession and the tenants sought more time to cancel a notice to end tenancy; to cancel a notice to end tenancy; and a monetary order.

The hearing was conducted via teleconference and was attended by both landlords and their agent and both tenants.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 Day Notice to End Tenancy for Unpaid Rent and the continuation of this tenancy is not sufficiently related to the tenants' claim for compensation. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenants' monetary claim is unrelated in that the basis for it rests largely on other facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notice. I exercise my discretion to dismiss the tenants' monetary claim. I grant the tenants leave to re-apply for their monetary claim.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to an order of possession for unpaid rent and to recover the filing fee from the tenants for the cost of

the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to more time to cancel a notice to end tenancy; to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 66, 67, and 72 of the *Act*.

Background and Evidence

The tenants submitted into evidence the following relevant documents:

- An unsigned copy of a tenancy agreement naming both parties for a month to month tenancy beginning on April 15, 2015 for a monthly rent of \$1,500.00 due on the 15th of each month with a security deposit of \$750.00 paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on July 15, 2015 with an effective vacancy date of July 25, 2015 due to \$750.00 in unpaid rent.

The tenants confirmed, in their testimony, that they received the 10 Day Notice on July 15, 2015 and that they submitted their Application for Dispute Resolution on July 21, 2015. The tenants sought more time to apply because they state that 15 minutes after the landlord served the Notice they had out of town guests arrived who stayed for 5 days.

The landlords submit the tenants paid the landlord only ½ month's rent for the month of May 2015 and a security deposit equivalent to ½ month's rent in May 2015. The landlord provided a copy of a receipt dated May 2, 2015 citing a security deposit of \$750.00 was paid and a receipt dated May 10, 2015 in the amount of \$750.00 part rent for May 2015.

The tenants submit that they do not owe the landlords any rent amounts. They state that when they moved into the rental unit the landlords failed to complete a move in inspection and that the unit required significant work to make it suitable for their occupation.

The tenants submit that because the landlords did not complete an inspection that they have extinguished their right to the security deposit. As a result, the tenants say they did not pay a security deposit but rather compensation for the work they had to do to

ready the unit for occupation totaled \$1,500.00 and they applied the security deposit to the rent owed for the month of May 2015, in partial satisfaction of this claim.

Analysis

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that “exceptional” means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is very strong and compelling.

I find the tenants have provided no testimony or evidence that identifies an exceptional circumstance sufficient to allow for an extension to file an Application for Dispute Resolution seeking to cancel a notice to end tenancy. I find the tenants made a choice to not submit their application within the required timeframes and there is no evidence of a strong or compelling reason to not be able to submit it within the 5 days allowed.

Therefore, I dismiss the tenants’ request for additional time to submit an Application for Dispute Resolution to seek to cancel a notice to end tenancy.

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

Section 1 of the *Act* defines a "security deposit" as money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any **liability or obligation** of the tenant respecting the residential property. [Emphasis added]. This means a landlord holds a security deposit for any losses they may have incurred as a result of the tenancy such as rent or damage to the rental unit.

Section 23(1) of the *Act* requires the landlord and tenant together to inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. Section 24 states the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for **damage to residential property** is extinguished if the landlord fails to participate in a move in inspection. [Emphasis added]

As a result, the landlord may hold a security deposit until the end of the tenancy to claim for any unpaid rent or lost revenue resulting from the tenancy, even if they have extinguished their right to claim against the deposit for damage to the unit. In essence, an extinguishment of the right to the landlord to claim against the deposit for damage to the rental unit does not mean that the landlord has forfeited the security deposit back to the tenants.

Section 21 of the *Act* stipulates that unless the landlord gives written consent, a tenant must not apply a security deposit or a pet damage deposit as rent. As such, I find the tenant's had no authority under the *Act* to convert their security deposit to rent, regardless of their determination that the landlord had extinguished his right to claim against the security deposit or their determination that the landlord owed them any money at all.

As a result, I find the landlords have established the tenants failed to pay the full amount of rent for the month of May 2015 and that on July 15, 2015, when the landlords issued the 10 Day Notice the tenants owed the landlords rent. I therefore find, the landlords issued a notice to end tenancy for unpaid rent in compliance with the requirements of Section 46.

Section 46(4) allows the tenant to either pay the rent or file an Application for Dispute Resolution to dispute the notice within 5 days of receipt of the notice.

Section 46(5) states that if a tenant who has received a notice under this section does not pay the rent or make an Application for Dispute Resolution to dispute the notice within the allowed 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

Based on the tenants' own testimony and my finding that the tenants are not entitled to more time to submit their Application for Dispute Resolution to cancel the Notice to End Tenancy for Unpaid Rent, I find the tenants failed to apply or pay the outstanding rent within 5 days of receipt of the 10 Day Notice and are conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit, pursuant to Section 46(5).

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

I find the landlords are entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the landlords for this application.

I order the landlord may deduct this amount from the security deposit held leaving a balance in the amount of \$700.00, in satisfaction of this claim, pursuant to Section 72(2)(b).

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 28, 2015

Residential Tenancy Branch

