



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hugh & McKinnon Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, MNR, FF; CNR

Introduction

This hearing concerns 2 applications:

- i) by the landlord for an order of possession, a monetary order as compensation for unpaid rent, and recovery of the filing fee; and
- ii) by the tenants for cancellation of a notice to end tenancy for unpaid rent.

Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the fixed term of tenancy is from October 01, 2014 to September 30, 2015. Monthly rent of \$2,500.00 is due and payable in advance on the first day of each month, and a security deposit of \$1,250.00 was collected.

The most recent 10 day notice issued by the landlord for unpaid rent is dated August 07, 2015, and it was served by registered mail. A copy of the notice was submitted in evidence. The amount of rent shown as unpaid when due on August 01, 2015 is \$2,500.00, and the date shown by when the tenants must vacate the unit is August 22, 2015. Subsequently, the tenants have made no further payment toward rent.

The tenants filed an application for dispute resolution on July 20, 2015, and later amended it on August 14, 2015 to include an application to dispute the aforementioned 10 day notice. The landlord's application was filed on September 01, 2015.

During the hearing the tenant testified that he does not dispute the landlord's claim for unpaid rent for August and September, however, the parties undertook to explore whether there may be flexibility around the date when the unit is fully vacated.

Analysis

Based on the documentary evidence and testimony, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated August 07, 2015. While the tenants disputed this particular notice on August 14, 2015 by way of amendment to their previously filed application for dispute resolution, the tenants do not dispute that rent has not been paid for either August or September 2015. Section 26 of the Act addresses **Rules about payment and non-payment of rent**, and provides in part:

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Following from all of the above, and in the absence of any evidence that the tenants have a right under the Act to deduct all or a portion of the rent, the tenants' application for cancellation of the 10 day notice is hereby dismissed, and I find that the landlord has established entitlement to an **order of possession**. During the hearing the landlord requested that the order of possession be made effective **two (2) days** after service on the tenants. During the hearing the parties also reached an understanding pursuant to which the tenants will vacate the unit by not later than **October 07, 2015**, at which time a move-out condition inspection will be scheduled for completion.

As to compensation, I find that the landlord has established a claim of **\$5,050.00**:

\$2,500.00: *unpaid rent August*; \$2,500.00: *unpaid rent September*; \$50.00: *filing fee*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**, in part:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

The landlord prefers to deal with the disposition of the security deposit at the end of tenancy, following completion of the move-out condition inspection report with the tenants. However, the \$50.00 filing fee paid by the landlord limits the amount of the monetary order to \$5,000.00. Accordingly, I order that the landlord retain **\$50.00** from the tenants' security deposit of \$1,250.00 in order to recover the filing fee, leaving the balance of the security deposit of **\$1,200.00** (\$1,250.00 - \$50.00) to be resolved between the parties at the end of tenancy. In this regard, the attention of the parties is drawn to section 38 of the Act which addresses **Return of security deposit and pet damage deposit**.

Following from the above, I find that the landlord has established entitlement to a **monetary order** for unpaid rent in the amount of **\$5,000.00** (\$2,500.00 + \$2,500.00).

Conclusion

The tenants' application is hereby dismissed.

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenants. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$5,000.00**. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

The landlord is ordered to retain **\$50.00** from the security deposit in order to recover the filing fee for this application.

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: September 22, 2015

Residential Tenancy Branch

