



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR MNR MNSD MNDC FF

For the tenants: CNR MNDC FF

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 landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for authorization to keep all or part of the tenants’ security deposit, 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”), for a monetary order 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.

Tenant Y.F.Z (the “tenant”), the landlord, an assistant for the landlord and a friend of the tenants (the “friend”) attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter 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.

Both parties confirmed receiving the documentary evidence package from the other party prior to the hearing, and that they had the opportunity to review that evidence prior to the hearing. I find the parties were sufficiently served in accordance with the *Act*.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenants indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is to determine if the tenancy is going to continue. I find that not all the claims in the tenants' Application for Dispute Resolution (the "Application") are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request to set aside the 10 Day Notice dated August 5, 2015 and for the recovery of the cost of the filing fee, and the landlords' request for an order of possession, for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for authorization to keep all or part of the tenants' security deposit, and to recover the cost of the filing fee. The tenants' Application for monetary compensation is **dismissed, with leave to re-apply**.

By mutual agreement of the parties, the landlords' application was amended to remove the friend of the tenants', L.Z. as a respondent tenant. The parties clarified that while L.Z. may have been an occupant she was never a tenant during the tenancy and has no rights or obligations under the *Act* as a result.

Issues to be Decided

- Should the 10 Day Notice dated August 5, 2015, be cancelled?
- Are the landlords entitled to an order of possession under the *Act*?
- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?
- Is either party entitled to the recovery of the cost of their filing fee under the *Act*?

Background and Evidence

The parties agreed that a month to month tenancy began on June 28, 2015 with \$1,730 per month being due on the 28th day of the month prior, so for example, rent for August 2015 was due on July 28, 2015. The tenants paid a security deposit of \$865 at the start of the tenancy, which the landlord continues to hold.

The landlord is claiming \$3,460 comprised of \$1,730 in unpaid August 2015 rent which was due on July 28, 2015, and \$1,730 for unpaid September 2015 rent which was due on August 28, 2015.

A copy of the 10 Day Notice dated August 5, 2015 was submitted in evidence. The tenant confirmed they received the 10 Day Notice on August 5, 2015 and disputed it on August 7, 2015. The 10 Day Notice indicates that a total of \$1,730 in unpaid rent was due on July 28, 2015, and includes an effective vacancy date of August 15, 2015.

The tenant testified that they could not pay rent by cheque as they could not find the landlord and did not want to put the cheque in the mailbox of the landlord which was the same home in which they were living when August rent was due. The landlord testified that on August 11, 2015, she moved and provided her new mailing address to the tenants, which the tenant disputed. The tenant claims to have called the landlord three times on July 30, 2015 and could not reach the landlord. The landlord denies that the tenants attempted to call her and have made no attempts to pay the landlord for August or September 2015 rent.

The tenants continue to occupy the rental unit. During the hearing, the landlord requested an order of possession.

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 find the tenants have provided insufficient evidence to support that rent for August and September 2015 has been paid and that reasonable steps were taken to pay the rent. I find the tenants' rationale that they did not want to put the rent cheque in the landlord's mailbox to be unbelievable, especially consider the landlord was residing in the home when August 2015 rent was due on July 28, 2015. The onus of proof is on the tenants to prove that they did pay rent when they applied to dispute the 10 Day Notice. The tenant confirmed that rent for September 2015 has also not been paid to date.

As a result, I dismiss the tenants' application to cancel the 10 Day Notice dated August 5, 2015. I find that the 10 Day Notice is valid and I uphold the 10 Day Notice.

Order of Possession – The effective vacancy date of the 10 Day Notice was August 15, 2015, which has passed and the tenants continue to occupy the rental unit. Given the landlord's oral request for an order of possession, and pursuant to section 55 of the

Act, once I dismissed the tenants' application to cancel the 10 Day Notice and I upheld the landlords' 10 Day Notice, I grant the landlord an order of possession effective **two (2) days** after service on the tenants.

Claim for unpaid rent – I find that rent of \$3,460 remains owing by the tenants to the landlord based on the testimony of the parties, comprised of \$1,730 for August 2015 and \$1730 for September 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 28th day of the month prior. The tenants continue to occupy the rental unit. The landlord will not regain possession of the unit until after service of the order of possession. I find the landlord has met the burden of proof and I find the landlord has established a monetary claim of **\$3,460** as described above.

As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of their filing fee in the amount of **\$50**.

As the tenants' application was dismissed, I do not grant the tenants the recovery of the cost of their filing fee.

Monetary Order – I find the landlord has established a total monetary claim of **\$3,510**, comprised of \$3,460 in unpaid rent, plus the \$50 filing fee.

I ORDER the landlord to retain the tenants' full security deposit of \$865 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$2,645**. 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.

Conclusion

The tenants' application is dismissed.

The landlord's application is successful.

The landlord has 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 landlord has established a total monetary claim of \$3,510, comprised of \$3,460 in unpaid rent, plus the \$50 filing fee. The landlord has been ordered to retain the tenants' full security deposit of \$865 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$2,645. 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: September 8, 2015

Residential Tenancy Branch

