



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: OPR MNR FF
For the tenant: CNR LRE RR 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 landlords applied for an order of possession for unpaid rent or utilities, for a monetary order unpaid rent or utilities, and to recover the cost of the filing fee.

The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated August 2, 2015, for an order to suspend or set conditions on the landlord’s right to enter the rental unit, to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover the cost of the filing fee.

Landlord H.S. (the “landlord”) attended the hearing. The tenant did not attend the hearing. As the tenant did not attend the hearing to present the merits of her application, the tenant’s application was **dismissed, without leave to reapply**, after the 10 minute waiting period had elapsed. The hearing continued with consideration of the landlord’s application.

The hearing process was explained to the landlord, and the landlord was given an opportunity was given to ask questions about the hearing process. Thereafter the landlord gave affirmed testimony, was provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

The landlord testified that he served the tenant at the rental unit with the Notice of Hearing, Application and documentary evidence on August 11, 2015 at approximately 2:30 p.m. at the rental unit. 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.

Without any evidence to the contrary, I accept that the tenant was served on August 11, 2015 at the rental unit in accordance with the *Act*.

Preliminary and Procedural Matters

At the outset of the hearing, the landlord clarified that the rental unit for the tenant was the shop, and as a result, the landlord's application was amended in accordance with section 64(3) of the *Act* to include "shop" in the description of the rental unit address.

In addition, the landlord clarified that the tenant D.F. was not co-tenants with C.A., who is listed as an applicant, and that C.A. had a different tenancy agreement for the barn on the property, and as a result, in accordance with section 64(3) of the *Act* C.A. was removed from the tenants' application resulting in one tenant applicant, D.F.

Furthermore, this proceeding was originally joined with another cross-application, the files numbers of which have been included on the front page of this decision for ease of reference. Based on the undisputed testimony of the landlord, I accept that those other cross-application file numbers relate to the barn on the same property, which falls under a different tenancy agreement. Therefore, I have severed that cross-application from this proceeding, and conducted a separate hearing for that cross-application pursuant to section 2.3 of the Rules of Procedure.

Finally, the landlord testified that the rental unit was abandoned as of September 12, 2015; however, in case the tenant decides to return to the rental unit, the landlords requested an order of possession for the rental unit.

Issues to be Decided

- 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?
- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The landlord testified that a fixed term tenancy agreement began on October 1, 2014 and was scheduled to revert to a month to month tenancy after September 30, 2015. Monthly rent in the amount of \$1,000 was due on the first day of each month. The tenant paid a security deposit of \$500 and a pet damage deposit of \$500 at the start of the tenancy, both of which the landlord continues to hold.

The landlord's monetary claim of \$1,500 is comprised of the following:

| | | |
|--------|------------------------------------|----------------|
| Item 1 | Unpaid portion of August 2015 rent | \$500 |
| Item 2 | Unpaid rent for September 2015 | \$1,000 |
| | TOTAL | \$1,500 |

The landlord testified that the tenant failed to pay \$500 of August 2015 rent, and failed to pay any amount towards September 2015 rent. The landlord stated that he deemed the rental unit abandoned as of September 12, 2015.

A copy of the 10 Day Notice dated August 2, 2015 was submitted in evidence. The landlord stated that the 10 Day Notice was served on the tenant on August 2, 2015 at 2:00 p.m. at the rental unit in person. The effective vacancy date of the 10 Day Notice was August 12, 2015 and indicated that \$500 was due on August 1, 2015. The landlord stated that the \$500 has not been paid and subsequently, the tenant failed to pay anything for September 2015 before abandoning the rental unit on September 12, 2015.

Although the tenant originally filed to dispute the 10 Day Notice, the tenant failed to attend the hearing, and the tenant's application was dismissed. The landlord verbally requested an order of possession after the tenant's application was dismissed.

Analysis

Based on the undisputed testimony of the landlord and the documentary evidence before me, and on the balance of probabilities, I find the following.

Order of possession – Pursuant to section 55 of the *Act*, once the tenant's application was dismissed for failing to attend the hearing to present the merits of her application, and the landlord verbally requested an order of possession, I must grant that order.

Therefore, I grant the landlords an order of possession effective **two (2) days** after service on the tenant.

Unpaid rent – I accept the landlord's undisputed testimony that the tenant failed to pay \$500 of August 2015 rent, and owes \$1,000 for September 2015 rent. Section 26 of the *Act* requires that a tenant pay rent when it is due in accordance with the tenancy agreement, whether or not the landlords comply with the *Act*. Therefore, I find the tenant has breached section 26 of the *Act* by failing to pay \$500 of August 2015 rent and \$1,000 rent for September 2015. Therefore, I find the landlords have met the burden of proof and are entitled to **\$1,500** in compensation for unpaid rent as claimed.

The landlords continue to hold the tenant's security deposit of \$500 and pet damage deposit of \$500 which has not accrued interest since the start of the tenancy. As the landlords' claim had merit, **I grant** the landlords the recovery of the **\$50** filing fee.

I find that the landlords have established a total monetary claim of **\$1,550** as follows:

| | | |
|--------|--|--------------------|
| Item 1 | Unpaid portion of August 2015 rent | \$500 |
| Item 2 | Unpaid rent for September 2015 | \$1000 |
| Item 3 | Recovery of filing fee | \$50 |
| | SUB-TOTAL | \$1,550 |
| | <i>Less tenant's \$500 security deposit & \$500 pet damage deposit</i> | <i>-(\$1,000)</i> |
| | TOTAL AMOUNT OWING BY TENANT TO LANDLORD | \$550 |

I ORDER the landlords to retain the tenant's full security deposit of \$500 and full pet damage deposit of \$500 in partial satisfaction of the landlords' monetary claim. **I grant** the landlords a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlords in the amount of **\$550**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenant's application was dismissed in full, without leave to reapply.

The landlords' application was successful.

The landlords have been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlords have established a total monetary claim of \$1,550 and have been ordered to retain the tenant's full security deposit of \$500 and full pet damage deposit of \$500 in partial satisfaction of the landlords' monetary claim. The landlords have been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$550. This order must be served on the tenant 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 16, 2015

Residential Tenancy Branch

