



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to keep the Tenants' security deposit and to recover the filing fee from the Tenants.

Preliminary Issues

The Landlord and the caretaker of the rental unit appeared for the hearing. The Co-Tenant, who was not named on the Application, also appeared for the hearing and explained that she was a Co-Tenant in this tenancy with the Tenant named on the Application. The Landlord confirmed that the Co-Tenant was part of this tenancy and the parties agreed to amend the Landlord's Application to include the Co-Tenant as party to these proceedings (herein referred to as the Tenant). This is also reflected in the style of cause appearing on the front page of this decision.

The parties provided affirmed testimony. The Landlord provided a copy of the notice to end tenancy. The Tenant confirmed that she had provided no documentary evidence prior to the hearing. However, the Tenant had witnesses that she wanted to call to provide evidence on the state of the rental unit. The Tenant confirmed receipt of the Landlord's Application which was served by registered mail pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act").

The Landlord also explained that since the time of making the Application, the Tenant has failed to pay rent for September 2015. The Landlord anticipated unpaid rent loss for August 2015 which is the reason why he included this amount in the Application. However, he did not anticipate the unpaid rent for September 2015. As a result, I allowed the Landlord to amend the Application to include unpaid rent for September 2015. I did this pursuant to my authority under Section 64(3) (c) of the Act.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent for three months?
- Is the Landlord entitled to keep the Tenants' security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The Landlord testified that this tenancy for rental unit number 10 (the "rental unit") began on June 1, 2015 on a month to month basis. No written tenancy agreement was completed but the Tenants paid \$340.00 as a security deposit on May 18, 2015 which the Landlord still retains. The Landlord testified that rent in the amount of \$680.00 is payable by the Tenants on the first day of each month.

The Tenant disputed the Landlord's version of how this tenancy came to be in existence. The Tenant explained that the Landlord had promised them unit number 14 in the same building but had provided them with the current rental unit instead.

The Tenant explained that the Landlord informed them it was only temporary until unit number 14 became available. Therefore, they stored their belongings in the rental unit. However, unit number 14 was not made available and therefore, the Tenants had nowhere else to go and had to take occupancy of the rental unit. The Tenant explained that this was the subject of dispute in a previous hearing held on August 27, 2015 by a different Arbitrator (the file number for which appears on the front page of this decision). In the decision relating to that hearing for which the Tenant requested an Order of Possession for unit number 14, the Arbitrator made the following finding:

"I therefore accept the Tenant's more believable evidence that the Parties did agree that the Tenant's would rent #14 and that the Tenants only moved into unit #10 as a temporary stay until #14 was available. I find therefore that the Landlord breached the oral tenancy agreement for unit #14 by not providing this unit. However I accept the undisputed evidence that unit #14 is currently in possession of a third party and I cannot make an order that would conflict with the rights of this third party to the unit. As a result I find that the Tenant's claim for an order of possession must be dismissed. The Tenant has leave to reapply for compensation should the Tenant have suffered any losses in relation to the Landlord's breach of the tenancy agreement."

[Reproduced as written]

The Tenant explained that they were continuing to reside in the rental unit because they had nowhere else to go. However, the rental unit is infested with mold and the Landlord is refusing to sign paperwork relating to the Tenants' application for financial assistance from a government organization. The Tenant explained that it was for these reasons that they have not paid rent since taking occupancy of the rental unit. The Tenant explained that she did give the Landlord \$680.00 as first month's rent and the security deposit of \$340.00 prior to the start of the tenancy, but this was for unit number 14.

As the Tenant failed to pay rent on July 1, 2015, the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on July 2, 2015 for the rental unit. The Notice was provided into evidence and shows an expected date of vacancy of July 12, 2015 due to \$680.00 in unpaid rent. The Notice was placed into the Tenants' mail box.

The Tenant confirmed receipt of the Notice on July 2, 2015 and confirmed that they have not paid rent for July, August and September 2015. The Tenant explained that the previous Arbitrator had determined that the Landlord was not a credible person and that she did not have to pay rent. The Landlord and caretaker disputed this stating that the Tenant had no authority to withhold rent and that no paperwork relating to assistance from a government organization has been provided to them. Therefore, the Landlord now seeks to end the tenancy and recover the rental arrears claimed.

Analysis

The *Residential Tenancy Act* defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

I have considered the previous Arbitrators decision of September 1, 2015 and I find that while that Arbitrator made a finding that the Landlord breached the oral tenancy agreement that related to unit number 14, the Tenant was not given permission to withhold rent for rental unit number 10.

Notwithstanding the Tenant's argument that she was supposed to be renting unit number 14, I find the evidence suggests that an oral tenancy agreement had been established between the parties for unit number 10. This is based on the fact that the

Tenants took occupancy of rental unit and they continue to do so even after being notified that their request for an Order of Possession of unit number 14 had been dismissed. I also note that the Tenants were given remedy for the breach of the Landlord of the tenancy for unit number 14.

As I have determined that a tenancy for the rental unit has been established, the Tenants were obligated to pay rent in accordance with Section 26(1) of the Act. Therefore, I turn my mind to the Notice which seeks to end this tenancy. I find that the contents of the Notice comply with the requirements of Section 52 of the Act. I accept the parties' undisputed evidence that the Notice was served and received by the Tenants on July 2, 2015. The Notice clearly outlines the steps a tenant must take in order to dispute the Notice or have it cancelled.

Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and must vacate the rental unit on the vacancy date of the Notice.

There is no evidence before me that the Tenants paid the overdue rent or disputed the Notice. As a result, I find the Tenants are conclusively presumed to have accepted that the tenancy ended on the vacancy date of the Notice. As this date has now passed, the Landlord is entitled to an Order of Possession which is effective **two days after service on the Tenants**. This order may then be filed for enforcement in the Supreme Court of British Columbia as an order of that court if the Tenants fail to leave.

Based on the undisputed oral evidence of the Landlord above, I also find the Landlord is entitled to recover **\$2,040.00** (\$680.00 x 3) for the three months of rental arrears. As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$50.00** Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is **\$2,090.00** (\$2,040.00 + \$50.00).

As the Landlord already holds the Tenants' **\$340.00** security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is awarded a Monetary Order for the outstanding balance of **\$1,750.00** (\$2,090.00 - \$340.00). This order must be served on the Tenants and may then be enforced in the Provincial Court (Small Claims) as an order of that court. Copies of the above orders for service and enforcement are attached to the Landlord's copy of this decision.

Conclusion

The Tenants failed to pay rent as required by the Act or dispute the Notice. As a result, the Landlord is granted an Order of Possession effective two days after service on the Tenants. The Landlord is allowed to keep the Tenants' security deposit and is granted a Monetary Order for the outstanding amount awarded of **\$1,750.00**.

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 16, 2015

Residential Tenancy Branch

