



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF; CNR, CNC, MNDC, OLC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated September 3, 2015 ("10 Day Notice"), pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated August 26, 2015 ("1 Month Notice"), pursuant to section 47;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord and his lawyer (collectively "landlord") and the two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 74 minutes in order to allow both parties to fully present their submissions.

In accordance with section 64(3)(c) of the *Act*, I amend both parties' applications as noted below. I amend the landlord's application to correct the landlord's name, which was incorrectly reversed on the landlord's application. I also amend the landlord's application to increase the monetary claim sought from \$3,700.00 to 4,933.33 plus the \$50.00 filing fee, as both parties agreed to deal with all unpaid rent owing at this hearing. I amend the tenants' application to reduce their claim for moving costs from \$1,000.00 to \$330.00, as this is a reduction in their claim and not prejudicial to the landlord. I further amend the tenant's application to add a claim for a loss of vacation costs of \$221.43, as per the consent of the landlord.

At the outset of the hearing, both parties agreed that the tenants would vacate the rental unit by 1:00 p.m. on November 20, 2015. As per both parties' agreement, I issue an order of possession to the landlord against the tenants effective at 1:00 p.m. on November 20, 2015. Accordingly, the landlord withdrew his application for an order of possession for unpaid rent and the tenants withdrew their application to cancel the landlord's 10 Day Notice and 1 Month Notice. Therefore, these portions of both parties' applications are withdrawn.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain the tenants' security deposit in partial satisfaction of the monetary award requested?

Are the tenants entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings around each are set out below.

The landlord stated that this tenancy began on December 15, 2014. Monthly rent in the amount of \$1,850.00 is payable on the first day of each month. A security deposit of \$1,000.00 was paid by the tenants and the landlord continues to retain this deposit. No written tenancy agreement governs this tenancy, as only a verbal agreement was reached between the parties.

During the hearing, the landlord amended his monetary claim for unpaid rent. The landlord stated that he would only be seeking unpaid rent of \$1,850.00 for each of September and October 2015, as well as adding a claim for prorated rent of \$1,233.33 from November 1 to 20, 2015. The tenants agreed that rent was unpaid as per the above amounts for the above months. The tenants claim that they do not owe the full rent amount above because they are entitled to one month's free rent compensation under section 51 of the *Act*.

The tenants claimed that they did not pay rent for a number of different reasons. The tenants stated that the landlord refused to accept anything but cash for rent, including interac e-transfers. The tenants claimed that they did not want to pay rent in cash. The landlord denied this fact, stating that the tenants have no proof of their allegation that the landlord expected rent only in cash.

The tenants agreed that they were served with the 10 Day Notice on September 3, 2015 to move out by September 13, 2015. The tenants stated that they did not pay rent on September 1, 2015 because they knew that the rental unit was on the market to be sold and they were awaiting a 2 Month Notice to End Tenancy for Landlord's Use of Property from the landlord. The landlord stated that he was not obligated to issue a 2 Month Notice to End Tenancy for Landlord's Use of Property until all conditions of sale were satisfied and this was done after the 10 Day Notice was issued to the tenants.

The tenants stated that they are entitled to one month's free rent compensation under section 51 of the *Act* and they seek an order for the landlord to comply with this section. The tenants acknowledged that they were served with the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated September 25, 2015 with an effective move-out date of December 2, 2015 ("2 Month Notice") on September 27, 2015. The tenants stated that the 2 Month Notice entitles them to one month's free rent and that this amount was not accounted for by the landlord when he issued notices requesting rent.

The landlord disputed that the tenants are entitled to one month's free rent, claiming that the tenants were first served with the 1 Month Notice and then the 10 Day Notice

prior to the 2 Month Notice being issued. The landlord stated that the tenants were required to vacate the rental unit by September 13, 2015 as per the 10 Day Notice. The landlord indicated that because the tenants refused to vacate the rental unit and the property had been sold, he issued the 2 Month Notice to them. The tenants agreed that they were served with the 1 Month Notice on August 26, 2015 to move out by September 30, 2015. The tenants stated that the landlord had no cause to evict them and so this notice was invalid.

The tenants seek a monetary award from the landlord. The tenants seek \$330.00 for moving costs, \$350.00 for a hot tub cover, \$575.00 for hot tub chemicals, \$1,000.00 for furnishings they built at the rental unit, and \$221.43 for a change in their vacation plans.

The tenants indicated that they are entitled to moving costs of \$330.00 because the rental unit was in bad condition during their tenancy, and the landlord threatened them, pushed them out of their home and lied to them. The tenants stated that they are seeking costs to cover a moving pod which was \$288.00, as well as boxes and packing supplies for moving. The tenants explained that a moving pod is a rented unit located in the driveway of their home, which will assist them in moving to their new location. The tenants noted that they had receipts for the above expenses but they were not submitted for this hearing. The landlord disputes the moving costs claimed by the tenants, stating that the tenants are not entitled to this head of damages under the Act, they did not provide documentary proof of their costs and they did not provide the landlord with notice of their intention to vacate the unit until this hearing.

The tenants seek \$350.00 for a hot tub cover purchase. They stated that at the beginning of this tenancy, the landlord told them to sell the hot tub. The tenants stated that they used the hot tub and also fixed it so that it could be sold later as per the landlord's instructions. The tenants noted that the old cover had disintegrated and fallen apart so they purchased a new cover. The tenants claimed that they did not have a receipt for this purchase because it was paid in cash.

The tenants seek \$575.00 for hot tub chemicals they purchased. They stated that in order to use the hot tub and bring it back to working order, they had to repair and maintain it. The tenants explained that they went to the store where the landlord bought the hot tub in order to purchase the chemicals but they did not submit receipts for this hearing. The tenants maintained that they did not advise the landlord that they were purchasing the chemicals but the landlord knew they were using and repairing the hot tub before selling it. The tenants claim that the landlord was agreeable to this.

The landlord disputes the costs being claimed by the tenants for the hot tub cover and chemicals. The landlord maintained that he reached an agreement with the tenants at the beginning of this tenancy that no one would be using the hot tub and the tenants would just sell it. The landlord stated that if the tenants sold the hot tub, he would share in half the profit. The landlord stated that he offered the tenants to disconnect the power to the hot tub and remove the water at the beginning of the tenancy. The landlord claimed that the tenants had children using the hot tub during the tenancy. The landlord noted that the tenants did not have his permission to buy a new hot tub cover. The landlord explained that the tenants are responsible for buying the hot tub chemicals because they decided to use the hot tub, despite their agreement to keep it empty. The landlord noted that the tenants did not submit proof of any costs incurred for the hot tub cover or the chemicals.

The tenants initially applied for \$1,000.00 for furnishings they built at the rental unit. During the hearing, the tenants stated that they simply wanted to remove these three items when they vacate the rental unit, rather than obtain compensation for the items. The tenants explained that they purchased two shoe cabinets, worth \$179.00 each, which are affixed to the wall at the top with two screws. The tenants stated that they also purchased one light fixture. The landlord agreed to the tenants removing the above three items from the rental unit. The landlord stated that the tenant must repair and repaint any damage to the walls from the two screw holes holding up the two shoe cabinets. The tenants stated that these screw holes are small and would be ordinary wear and tear.

The tenants seek a monetary award of \$221.43 for having to change their vacation plans. The tenants explained that they booked a vacation on March 15, 2015 to leave town between November 3 and 14, 2015. They stated that they were required to change their vacation plans two days prior to this hearing date, in order to attend this hearing on November 5, 2015, and because they secured a new rental unit to move into on November 15, 2015 and they would be returning late from vacation on the evening of November 14, 2015. The landlord disputes the tenants' claims, stating that he had no control of the hearing date given to both parties and because the tenants failed to provide evidence of their vacation cancellation costs.

Analysis

Landlord's Application

Section 26 of the *Act* requires that rent be paid on the date indicated in the tenancy agreement, which both parties agreed is the first day of each month. Section 7(1) of the

Act establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss. I find that the landlord is entitled to \$4,933.33 in rental arrears for this tenancy from September 1 to November 20, 2015, as both parties agreed that this rental amount was unpaid.

I find that the tenants are not entitled to one month's free rent compensation under section 51 of the *Act* because the landlord only issued the 2 Month Notice out of an abundance of caution. The landlord had already issued two other notices to end tenancy prior to the 2 Month Notice being issued and the tenants failed to vacate the rental unit. Further, the landlord could not issue the 2 Month Notice, as per section 49(5) of the *Act*, until the landlord entered into a good faith agreement to sell the rental unit, all the conditions on which the sale depended had been satisfied, the purchaser asked the landlord in writing to give notice to end tenancy, and the purchaser intended to occupy the rental unit. The landlord confirmed that the house was sold on September 7, 2015, the purchaser told the landlord on September 13, 2015 that he wished to occupy the rental unit by December 2, 2015, and written notice of this fact was provided by the purchaser on September 18, 2015. The landlord provided documentation confirming all of the above information. Therefore, the tenants were not authorized to withhold their rent for September 2015 in anticipation of a 2 Month Notice. The landlord could not issue the notice until September 18, 2015 at the earliest, and both the 10 Day Notice and 1 Month Notice were issued before that date.

Therefore, the tenants were required to pay their rent of \$1,850.00 on September 1, 2015, as per the 10 Day Notice. The tenants failed to do so. The tenants also failed to provide documentary evidence that the landlord only accepted cash rent payments, as the landlord denied this fact. Although the tenants filed an application to dispute the 10 Day Notice, they did not have a valid reason to withhold rent or deduct amounts from their rent including for emergency repairs or pursuant to an order from an Arbitrator of the Residential Tenancy Branch. Therefore, the tenants were required to vacate the rental unit by September 13, 2015. They failed to do so. The 2 Month Notice was issued to the tenants on September 27, 2015 after the 10 Day Notice was issued. Although the 1 Month Notice was issued first before the 10 Day Notice and the 2 Month Notice, the effective date of that notice (September 30, 2015) was after the effective date of the 10 Day Notice (September 13, 2015). Therefore, as the 10 Day Notice was a valid notice and the effective date was prior to the other two notices, the 1 Month Notice is not material to this issue.

The landlord continues to hold the tenants' security deposit of \$1,000.00. Although the landlord stated that this tenancy had not yet ended at the time of this hearing and that the security deposit could be used to deal with damages at the end of this tenancy, it is within my discretion to offset the security deposit against a monetary order. Therefore, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$1,000.00 in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this Application, I find that he is entitled to recover the \$50.00 filing fee paid for this Application.

Tenants' Application

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the tenants must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the tenants' application for moving costs, hot tub cover and chemical costs and vacation costs, totalling \$1,476.43, without leave to reapply. The tenants did not provide receipts or other documentary evidence to prove the actual amount required to compensate for their losses. The tenants confirmed that they had receipts for the above expenses, with the exception of the hot tub cover which was paid in cash. The tenants could have obtained a letter or another document to confirm that they paid cash for the hot tub cover. The tenants did not submit any receipts, despite the fact that their application was filed on September 3, 2015, more than two months prior to this hearing date on November 5, 2015. The tenants have failed to meet part three of the above test and I find that they are not entitled to compensation for this reason.

I order the landlord to allow the tenants access to the rental unit property in order to retrieve their one light fixture and their two shoe cabinets, as agreed to by the landlord during this hearing. I order that this retrieval take place on a mutually agreeable date and time within 30 days of the date of this decision. If the landlord does not provide the tenants with access within the above time period or if the tenants' property has been

disposed of by the landlord, I allow the tenants leave to reapply for a monetary award for the cost of these furnishings. Accordingly, the tenants' application for a monetary award in the amount of \$1,000.00 for these furnishings, is dismissed with leave to reapply.

If the parties disagree with respect to whether damages have been caused due to the removal of the above three items, both parties are at liberty to make applications for dispute resolution at the Residential Tenancy Branch to determine such damages.

The tenants' application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement is dismissed without leave to reapply. The tenants confirmed that they applied for this order to obtain the landlord's compliance with section 51 of the *Act* in providing them with one month's free rent compensation. As noted above, I find that the tenants are not entitled to this compensation.

As the tenants were mainly unsuccessful in their application, I find that they are not entitled to recover the \$50.00 filing fee paid for their application. They must bear the cost of this fee.

Conclusion

I grant an Order of Possession to the landlord effective **at 1:00 p.m. on November 20, 2015**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$3,983.33 against the tenants and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenants' application for a monetary order for \$1,476.43, an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, and to recover the \$50.00 filing fee, is dismissed without leave to reapply.

I order the landlord to provide the tenants with access to the rental unit in order to retrieve their three furnishings, at a mutually agreeable date and time within 30 days from the date of this decision. If the tenants are not provided access or the tenants' property has been disposed of by the landlord, I allow the tenants leave to reapply for a monetary award for the cost of this property. Accordingly, the tenants' application for a

monetary award in the amount of \$1,000.00 for these three furnishings, is dismissed with leave to reapply.

The landlord's application for an order of possession for unpaid rent is withdrawn.

The tenants' application to cancel the landlord's 10 Day Notice and 1 Month Notice is withdrawn.

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: November 25, 2015

Residential Tenancy Branch

