



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: OPR, MNR, FF
For the tenant: CNR, AS, RR

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act ("Act").

The landlords applied for an order of possession for the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice"), a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

The tenants applied for an order cancelling the Notice, for an order allowing the tenant to assign or sublet the rental unit as the landlord has unreasonably withheld permission to do so, and for an order allowing a reduction in rent.

The landlord, the landlord's agent, and the tenants attended the hearing. At the beginning of the hearing, neither party raised any issue regarding the service of the other's evidence; however, the tenants submitted that the landlords did not properly serve the tenants with their application. The tenants did confirm they have now received the landlords' application.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the participants were provided the opportunity to present their evidence orally, refer to evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed the evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-I have determined that the portion of the tenants' application seeking orders for the landlord is unrelated to the primary issue of enforcing or disputing the Notice.

As a result, pursuant to section 2.3 of the Rules, I have severed the tenants' application and dealt only with the issue raised by both parties of either enforcing or cancelling the Notice.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and to recovery of the filing fee paid for this application?

Are the tenants entitled to an order cancelling the Notice?

Background and Evidence

There was no written tenancy agreement prepared by the landlords and the parties could not agree on the amount of monthly rent owed by tenants.

The landlords submitted that tenancy began on February 1, 2015, that the monthly rent for the entire home was \$1400.00 per month, plus utilities, due on the 1st day of the month, and that the tenants paid a security deposit of \$700.00.

The tenants submitted that their monthly rent was \$700.00 for the upper portion of the rental home, that the landlords were to secure other tenants for the lower portion of the home for \$700.00 per month, and that a security deposit of \$700.00 was paid. The tenants did agree that the tenancy began on February 1, 2015.

Landlords' application-

The landlord's agent submitted that the tenants were served with the Notice by registered mail. The landlords submitted a copy of a proof of service form; however, the date the registered mail was sent was left blank. The tenants did file their application in dispute of the Notice and I accept that they were served the Notice.

The landlords submitted that they have served the tenants several 10 Day Notices from time to time during this tenancy; however, the Notice in question for this hearing was dated August 4, and listed an effective end of tenancy date of August 14, 2015. On the Notice, the landlords listed unpaid rent of \$8859.00 as of April 1, 2015, with a handwritten notation stating "+May June July + August". The Notice additionally included unpaid utilities of \$393.62.

The Notice informed the tenants that they had 5 days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice or to pay the rent in full; otherwise the tenants are conclusively

presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

The landlords asserted that since the issuance of the Notice, they have not received any rent payments from the tenants and are requesting an order of possession for the rental unit and a monetary order for unpaid rent.

Tenants' response and application-

The tenants reaffirmed that their monthly rent was \$700.00 and confirmed that they have not paid rent since a payment of \$400.00 on May 15, 2015.

In their defence, the tenants submitted that they have been required to make necessary emergency repairs in the rental unit, as the landlords refused to do so. One item mentioned by the tenants included replacement of the hot water tank, due to the leaks. The tenants submitted that their repair work and expenses were in lieu of rent payments.

The tenants also mentioned that the amount listed as unpaid rent on the landlords' current Notice was incorrect, as the landlords' claim for earlier unpaid rent was dismissed in a prior dispute resolution hearing. As the tenants referenced another dispute resolution hearing, I searched the Residential Tenancy Branch ("RTB") system for information about the landlords' application and the resulting Decision.

The landlords' earlier application shows a monetary claim of \$4492.92, comprised of unpaid rent of \$1400.00 for April, May, and June 2015, each, and unpaid utilities of \$292.92.

A hearing was held on July 13, 2015, on the landlords' previous application, and a Decision was issued by another Arbitrator on that day dismissing the landlords' application, in its entirety, due to their failure to attend the hearing.

The RTB records also show that the landlords filed an application for review consideration of the dismissal of their earlier monetary claim, and the landlords' application for review consideration was dismissed.

The tenants submitted further that they do not owe utilities to the landlords since June 2015, as the landlords terminated that service, requiring the tenants to pay for the utilities instead. According to the tenants, they have been paying the utilities since June.

Analysis

Landlords' Application:

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to pay rent by the date it is due, the landlord may serve the tenant with a Notice under section 46 of the Act.

The landlords bear the burden of proving their Notice, in this case, that the tenants owed rent and did not pay within 5 days of service of the Notice.

In the case before me, there was no written tenancy agreement pertaining to this tenancy as required of landlords under section 13(1) of the Act. The purpose of a written tenancy agreement is to communicate to the parties the terms and conditions of the tenancy, which are then enforceable. If the tenancy agreement is not in written form, the terms are left open to interpretation and in this case, I find the landlords submitted insufficient evidence to prove that monthly rent was \$1400.00. As there was a separate lower level, I find it is just as likely as not that the landlords could rent a separate suite for another \$700.00 as argued by the tenants, as there was no written tenancy agreement describing the rental unit or the amount of monthly rent required of the tenants.

I also considered that the landlords failed to supply any accounting records or tenant ledger sheets to establish a pattern that these tenants ever paid \$1400.00 in monthly rent. I therefore find, on a balance of probabilities, the tenants' monthly rent obligation was \$700.00 per month.

As I have made a finding that the tenants' monthly rent was \$700.00, I must then determine whether the tenants have fulfilled their obligation and in this case, I find that they did not. The tenants confirmed that they had not paid rent since June 2015. I therefore find that on the day the Notice was issued on August 4, 2015, the tenants owed at least some rent to the landlords and have not paid any of the rent, including any amount which may not be in dispute by the tenants.

Therefore, I find the tenancy has ended due to the tenants' failure to pay rent in accordance with the Act and the landlord is entitled to regain possession of the rental unit.

I therefore find that the landlords are entitled to and I grant an order of possession for the rental unit effective 2 days after service of the order upon the tenants. The order of possession for the rental unit is enclosed with the landlords' Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

As to the landlords' monetary claim of \$8859.00, the landlords' evidence shows that the claim was comprised of unpaid rent of \$1400.00 for April, May, June, July, and August 2015, or \$7000.00, and the balance for unspecified charges, perhaps hydro charges, though not clear on the monetary order worksheet as the space for the monetary amount was left empty. I therefore find the landlords submitted inconsistent and unclear evidence to prove their monetary claim as listed.

I also considered that the landlords' claim for unpaid rent for April, May, and June 2015 and for unpaid utilities through June was previously dismissed, without leave to reapply, by another Arbitrator.

As this issue has previously been decided upon by another Arbitrator on July 13, 2015, I cannot re-decide that issue as I am bound by this earlier Decision, under the legal principle of *res judicata*.

Going forward as to unpaid rent, in this case, as the landlords' claim for unpaid rent through June 2015, was dismissed, I am only able to consider a claim for unpaid rent since July 2015.

Due to the tenants' confirmation that they have not paid rent, I find the landlords are entitled to a monetary award of \$2850.00, comprised of unpaid rent of \$700.00 for July, August, September, and October 2015, each, and the \$50.00 filing fee paid by the landlords for their application.

I therefore grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the amount of their monetary award of \$2850.00, which is enclosed with the landlords' Decision.

Should the tenants fail to pay the landlords this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

Tenants' application:

Due to the above, the tenants' application for dispute resolution seeking a cancellation of the Notice is dismissed without leave to reapply as I find the tenants owed rent on the day the Notice was issued by the landlords, did not pay the rent, and did not have a legal right to withhold rent.

As to the balance of the tenants' application for an order allowing the tenants to assign or sublet the rental unit as the landlord has unreasonably withheld permission to do so and for an order allowing a reduction in rent, I dismiss that portion without leave to reapply as the tenancy is ending by way an order of possession for the rental unit granted to the landlords.

Conclusion

The landlord's application for an order of possession for the rental unit and a monetary order for unpaid rent has been granted.

The tenants' application seeking cancellation of the Notice is dismissed, without leave to reapply.

The portion of the tenants' application seeking orders for the landlords is dismissed, without leave to reapply.

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 6, 2015

Residential Tenancy Branch

