



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's application: OPR, MNR, FF

Tenants' application: CNR, MNDC

Introduction

This was a hearing with respect to applications by the landlord and by the tenants. The hearing was conducted by conference call. The landlord's representative called in and participated in the hearing. The named tenant called into the hearing late. She called into the hearing with J.L. an advocate. Miss J.L. said that the tenant attended at her office moments before the hearing without disclosing in advance that she was seeking her assistance with an already scheduled Residential Tenancy Branch hearing. Miss. J.L. said that she was not prepared to represent the tenant under these circumstances, although she did remain on the phone with the tenant throughout the hearing and did provide some services as a translator.

Preliminary matter

At the hearing the tenant requested an adjournment of the proceeding because of her language difficulties. The landlord's representative opposed the adjournment request. The tenant did not attend the hearing with her English speaking co-tenant. When I asked about his whereabouts, the tenant said that he was "at home." I declined to grant the tenant an adjournment. The hearing was concerned with both an application by the landlord and an application brought by the tenants. The tenants have had since December 21, 2015 to prepare for this hearing and I note that they have not submitted any documentary evidence in support of their application or in reply to the landlord's claims. According to the landlord, who is the agent for the Public Guardian and Trustee acting as committee of the estate of the deceased landlord, further delay will be prejudicial; the tenants have not paid rent since the death of the landlord in July, 2015.

Issue(s) to be Decided

Should the 10 day Notice to End Tenancy for unpaid rent dated December 8, 2015 be cancelled, or is the landlord entitled to an order for possession pursuant to that Notice?

Is the landlord entitled to a monetary award for unpaid rent and if so, in what amount?

Are the tenants entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is an upper suite in a house in Vancouver. The tenancy began in July, 2015. The landlord and owner of the rental property, Ms. G.Y. died on July 19, 2015 and on September 3, 2015 the Public Guardian & Trustee assumed the administration of the landlord's estate. The Public Guardian appointed the applicant, a property management company to manage the rental property. The Public Guardian and Trustee determined that due to the landlord's death in July no rent was paid by the tenants for the month of August or any subsequent months. On November 4, 2015 the property manager notified the tenants that it was now managing the property. The property manager has been unable to locate or provide a copy of a written tenancy agreement.

On November 26, 2015 when an employee of the property manager attended at the rental unit to address a maintenance problem raised by the tenants, the tenant, D. D. provided the property manager with the tenants' information, including the terms of the tenancy agreement. According to the tenants the monthly rent was \$1,000.00 and the tenants paid the sum of \$1,000.00 as a deposit at the start of the tenancy, presumably as a combined pet and security deposit. The property manager sent the tenants a new tenancy agreement based on a monthly rent of \$1,000.00 for the rental unit, but the tenants did not sign or return a copy of the draft agreement.

On December 9, 2015 the landlord served the tenants with a 10 day Notice to End Tenancy for unpaid rent by posting a copy to the door of the rental unit. The Notice stated that the tenants failed to pay rent in the amount of \$5,000.00 that was due on December 1, 2015. The Notice required the tenants to pay the rent within five days or to file an application for dispute resolution within five days, otherwise the tenants were required to move out of the rental unit by December 22, 2015. The landlord filed an application for dispute resolution on December 18, 2015.

The tenants did not pay the rent or apply to dispute the Notice to End Tenancy until December 21, 2015. On December 21, 2015 the tenants filed an application for dispute resolution and attended at the property manager's office to serve the application. The

tenants told the property manager that they paid the deceased landlord \$3,000.00 in July as payment in advance for July, August and September. The tenants said they did not have receipts for the payments. The property manager did not accept the tenants' statement about payments in the absence of any receipts. The tenants left the office without making any rent payment. The tenants have not made any payments since then and they continue to occupy the rental unit.

In the tenants' application filed on December 21, 2015 the tenants said the following:

Previous landlord passed away in Aug 2015. We didn't know where to pay the rent. We also paid previous landlord total \$3000 when we moved in in July 2015. The rent is \$1000/month. We didn't receive any notice by the (name of property manager) before Dec 08 2015 to advise how and where to submit the rent.

The tenants claimed a monetary award in the amount of \$10,000.00; they said in the application that the property manager:

failed to provide a proper living condition we were living with no electricity for 3 week, and I have contacted them multiple time regarding this issue. Therefore I am requesting 10,000\$ in compensation for my familys incalculable loss of sleep, food, and sickness. (Reproduced as written)

The tenants did not submit any documentary evidence to support their claim of rent payment or to support the claim for a monetary award.

Analysis

The tenants claimed to have pre-paid rent for August and September, but failed to provide any documentary evidence to corroborate the statement; I do not find the tenants' evidence to be credible. It appears more likely that the tenants sought to take advantage of the confusion created by the death of the landlord by advancing the assertion of a prepayment of rent. The tenants have made no payments of rent since they were notified on November 4, 2015 that the property management company was appointed to manage the rental unit and act as landlord. I accept and prefer the testimony of the landlord's representative that no rent has been paid since July and there are now seven months of rent outstanding. The tenants are well aware that no rent has been paid for January or for February and I therefore amend the landlord's application to include a claim for these two months as well as past unpaid rent. The tenants did not apply to dispute the 10 day Notice to End Tenancy within five days of the date they are deemed to have received it, which was on December 13, 2015. The tenants had until December 14, 2015 to apply for dispute resolution to dispute the Notice to End Tenancy; they did not do so until December 21, 2015. Their application

was out of time and they have not paid the outstanding rent. The tenants' application to cancel the Notice to End Tenancy is dismissed without leave to reapply. I therefore find that the landlord is entitled to an order of possession effective two days after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that court.

With respect to the tenants' application for a monetary award, they have submitted no documentary evidence in support of their claim and I find the claim is without merit. The claim is therefore dismissed without leave to reapply.

I accept the landlord's evidence that no rent has been paid for seven months, from August, 2015 to February, 2016. I find that the landlord is entitled to a monetary award in the amount of \$7,000.00. The landlord is entitled to recover the \$50.00 filing fee for this application, for a total award of \$7,050.00. The landlord has accepted the tenant's evidence that they paid a security deposit of \$1,000.00 at the start of the tenancy and I therefore order that the landlord retain the said deposit in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$6,050.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The tenants' application has been dismissed. The landlord has been granted a monetary award and an order for possession.

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: February 05, 2016

Residential Tenancy Branch

