



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUKHDEV SINGH GILL, JAS GILL & CAROL MARLEE BARTH
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LANDLORD: OPC, OPB, MNR, MNSD, FF
TENANT: CNC, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking an Order of Possession, a monetary order for unpaid rent, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notice to End Tenancy and to recover the filing fee.

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on February 19, 2016 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlords were done by personal delivery on February 12, 2016 in accordance with Section 89 of the Act.

Both Parties confirmed receiving the others hearing package.

Issues to be Decided

Landlord:

1. Are the Landlords entitled to end the tenancy?
2. Is there unpaid rent and if so how much?
3. Are the Landlords entitled to compensation for unpaid rent and if so how much?
4. Are the Landlords entitled to retain the Tenants' security deposit?

Tenant:

1. Are the Tenants entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on August 1, 2014 as a month to month tenancy. Rent is \$1,400.00 per month payable in advance of the 1st day of each month. The Landlord said a security deposit of \$700.00 was paid on August 1, 2014. A move in condition inspection report was completed at the start of the tenancy. The Landlords' agent said the Tenants have paid all the unpaid rent.

The Landlord said that the Tenants have paid the rent late each month since October, 2015. The Landlord's agent said the Tenants said the rent on the following dates: October 15, 2015, December 1, 2015 for November, 2015, December 29, 2015, January 22, 2016, February 20, 2016 and March 13, 2016. The Landlords' agent said the Tenants do not pay the rent as agreed in the tenancy agreement and this is a breach of the tenancy agreement therefore the Landlord wants to end the tenancy as soon as possible.

The Tenants said the Landlord has been OK with the rent being paid late and sometimes the Landlord is hard to find to pay the rent to. The Tenant said they have not been late every month but they have been late sometimes. The Tenant said the rent was paid late on October 5, 2015, December 14, 2015, January 22, 2016, February 12, 2016 and March 11, 2016. The Tenant said they have not received any notices or warning about late payments until now. The Tenants said it is not fair that the Landlord can evict them for paying the rent late.

The Tenants asked the Landlord if they could have more time to move out if the Landlords were successful in ending the tenancy.

The Landlord said he wanted to end the tenancy as soon as possible so he was not prepared to give the Tenants more time if he is successful in ending the tenancy.

Analysis

Section 26 (1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Policy Guideline # 38 says three late rent payments are sufficient to justify a Notice to End Tenancy.

I find from the testimony of both the Tenants and the Landlords that the Tenants have been late with the rent payment more than three times in the last 6 months. Consequently, I find the Tenants have no grounds to dispute the Landlord's application as they agree they have late rent payments. I dismiss the Tenants' application without leave to reapply.

I accept the Landlords' testimony and evidence that there have been more than 3 late rent payments in the last 6 months. Consequently, I find for the Landlords and I order the tenancy to end and I award the Landlords an Order of Possession with an effective vacancy date of 2 days after service of the Order on the Tenants.

With Respect to the Landlord's application to retain the Tenants' security deposit, I dismiss the Landlords claim at present as the tenancy has not ended and a move out condition report has not been completed so the Landlord has not established grounds for a damage claim or to retain the security deposit in this application. I dismiss the Landlords' claim for damage of \$600.00 and the Landlords' request to retain the Tenants' security deposit with leave to reapply.

As the Landlord has been successful in this application I order the Landlords to retain \$100.00 of the Tenants' security deposit to recover the filing fee for this proceeding.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants has been issued to the Landlords. A copy of the Order must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia.

The Tenants' application 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: March 30, 2016

Residential Tenancy Branch