



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROJECT 24 GARDEN APARTMENTS LTD [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPN MNR MNDC FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the *Residential Tenancy Act* (the "Act") for a monetary for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee, and "other" which clearly indicates a request for an order of possession based on a tenant's written 1 month notice to end the tenancy, and for a monetary order for unpaid rent or utilities.

An agent for the landlord (the "agent") and two building managers for the landlord, and tenants H.W. and R.S. appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenants confirmed that they received and reviewed the landlord's documentary evidence prior to the hearing. The tenants also confirmed that they did not submit documentary evidence in response to the landlord's Application.

Preliminary and Procedural Matters

At the outset of the hearing, the agent requested to remove a third tenant's name from their Application as the landlord made an error in listed the third tenant which was granted pursuant to section 64(3) of the Act. Furthermore, I find that such an amendment does not prejudice either tenant.

In addition, the agent verbally requested that given that tenant H.W. vacated the rental unit as agreed by May 31, 2016, the landlord was only seeking to name tenant R.S. on any resulting monetary order if they were so entitled under the Act. Furthermore, the

name of tenant H.W. would not be required as tenant H.W. vacated the rental unit as of May 31, 2016.

Issues to be Decided

- Is the landlord entitled to an order of possession based on a tenant's written notice to end the tenancy?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on September 1, 2007 although the parties agree that tenant H.W. moved into the rental unit on September 1, 2005 and co-tenant R.S. moved into the rental unit in 2009, although his name was not added to the tenancy agreement.

Monthly rent at the start of the tenancy was \$1,115.00 per month and was due on the first day of each month. The rent increased during the term of the tenancy to the most recent amount of \$1,335.00 per month which the parties confirmed. Tenant H.W. paid a security deposit of \$557.50 at the start of the tenancy which the landlord continues to hold.

The agent referred to the written one month notice to end tenancy from tenant H.W. submitted in evidence. In that document dated April 27, 2016, which the agent stated she received personally from tenant H.W. on April 27, 2016, tenant H.W. writes:

“...Please accept my desire to end tenancy as of May 31, 2016.
Thank you...”

The written notice is signed by tenant H.W. and includes her written name and the rental unit address.

Tenant R.S. testified that he became aware of the written notice of tenant H.W. on May 3, 2016 and it was a surprise to him. Tenant R.S. claims that tenant H.W. moved out five months prior to March 15, 2016 before she returned to the rental unit, which tenant H.W. disputed. Tenant H.W. stated that she was going for a week to visit a relative and come home to find her photos removed from the wall and a strange woman in the rental

unit with tenant R.S. Tenant R.S. confirmed that he does not have a tenancy agreement that lists him as a tenant. The parties agreed that tenant R.S. has paid rent and is considered a co-tenant of tenant H.W. as a result.

The agent testified that she has not received any prior written notices from either tenant to end the tenancy until the April 27, 2016 written notice to end the tenancy as of May 31, 2016 from tenant H.W.

There is no dispute that tenant H.W. vacated the rental unit by May 31, 2016.

Regarding the landlord's claim for unpaid June 2016 rent of \$1,335.00 the agents confirmed that due to tenant H.W. providing written notice to end the tenancy, the pre-authorized payments for rent were cancelled for June as the tenancy ended on May 31, 2016. Tenant R.S. confirmed that he has not provided another cheque or payment for June 2016 rent and as a result, rent for June 2016 remains unpaid as of the date of the hearing.

Analysis

Based on the documentary evidence from the landlord and oral testimony provided by the parties during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that pursuant to section 45(1) of the *Act* tenant H.W. provided proper written notice to the landlord which ended the month to month tenancy effective May 31, 2016. In addition, Residential Tenancy Policy Guideline 13 - Rights and Responsibilities of Co-tenants applies and reads in part:

“...If the tenant who moves out gives proper notice to end tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants...”

[reproduced as written]

Therefore, as the one month written notice to end the month to month tenancy signed and served on the landlord by tenant H.W. is a proper notice to end the tenancy, I find the tenancy ended for all tenants, including tenant R.S. who refused to vacate the rental unit and remains over-holding in the rental unit. Based on the above, **I grant** the landlord an order of possession effective **two (2) days** after service on tenant R.S.

Claim for loss of June 2016 rent – There is no dispute that the landlord has suffered a loss of June 2016 rent of \$1,335.00 as tenant R.S. continues to over-hold the rental unit and refuses to vacate. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$1,335.00** comprised of loss of rent for June 2016.

I afford no weight to the testimony of tenant R.S. who claimed that tenant H.W. due to disputed verbal testimony and insufficient evidence. In reaching this conclusion I have considered the testimony of the agent who testified that the only written notice to end the tenancy was from tenant H.W. received April 27, 2016 with an effective vacancy date of May 31, 2016.

As the landlord has succeeded with their application, I grant the landlord the recovery of the filing fee in the amount of **\$100.00**. The landlord requested not to offset the monetary amount with the security deposit and will return the security deposit to tenant H.W. in according with the *Act*.

Monetary Order – I find that the landlord is entitled to a monetary order pursuant to section 67 of the *Act* as follows:

1. Loss of rent for June 2016	\$1,335.00
2. Recovery of the cost of the filing fee	\$100.00
TOTAL OWED BY TENANT R.S. TO THE LANDLORD	\$1,435.00

Conclusion

The landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days after service upon tenant R.S. This order must be served on the tenant R.S. and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$1,435.00 as indicated above. The landlord is granted a monetary order under section 67 in the amount of \$1,435.00. This order must be served on tenant R.S. and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 16, 2016

Residential Tenancy Branch