



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, OPC, MNDC, O, FF

Introduction

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

- an Order of Possession for landlords' use of property and for cause, pursuant to section 55;
- 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;
- other unspecified remedies; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two landlords and the tenant 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 41 minutes in order to allow both parties to fully present their submissions.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the Act, I find that the tenant was duly served with the landlords' application.

As advised to both parties during the hearing, I did not consider the tenant's written evidence at the hearing or in my decision. The landlords said that they received it the night before the hearing, as did I at the Residential Tenancy Branch ("RTB"). The evidence was not received by the landlords at least 7 days before the hearing, as required by Rule 3.15 of the RTB *Rules of Procedure*, and the landlords did not have a chance to review or respond it.

Issues to be Decided

Are the landlords entitled to an Order of Possession?

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

Are the landlords entitled to other unspecified remedies?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

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

The tenant said that this tenancy began with the former landlord on February 1, 2016. A written tenancy agreement was signed between the former landlord and the tenant and a copy was provided for this hearing. The landlords said that they purchased the unit on April 5, 2016 and assumed the tenancy from the former landlord.

Both parties agreed to the following facts. This tenancy ended on August 1, 2016. Monthly rent in the amount of \$900.00 was payable on the first day of each month. A security deposit of \$450.00 was paid by the tenant and the landlords assumed this deposit from the former landlord. No move-in or move-out condition inspection reports were completed for this tenancy. The tenant did not provide a written forwarding address to the landlords. The tenant did not provide the landlords with written permission to retain any amount from her security deposit.

The landlords seek unpaid rent of \$900.00 for each month from June to August 2016, totalling \$2,700.00. The landlords also seek \$200.00 for cleaning, \$50.00 to replace an entrance door, and \$200.00 to replace a washing machine door. The landlords seek to recover the \$100.00 filing fee paid for their application.

The tenant stated that she did not pay June 2016 rent of \$900.00 because she was given a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated April 26, 2016 ("2 Month Notice") on the same date, to vacate by June 30, 2016. The tenant said that as per section 51 of the *Act*, she is entitled to one month's free rent of \$900.00 under this notice. The landlords said that the tenant was also given a 1 Month Notice to

End Tenancy for Cause, dated May 25, 2016 ("1 Month Notice") to vacate by June 30, 2016, so she is not entitled to the one month's rent free under the 2 Month Notice.

The tenant agreed that she owed \$900.00 to the landlord for July 2016 because she was living in the rental unit during that time. The tenant stated that she offered to pay the rent but the landlords refused it.

The tenant disputes paying rent of \$900.00 for August 2016 because she said that she left on August 1, 2016. Both parties agreed that the landlords refused the return of the rental unit keys by the tenant, stating that they wanted to have this hearing and obtain an order of possession first.

Analysis

Section 51 Compensation

Section 51 of the *Act* entitles the tenant to compensation of one month's free rent pursuant to a 2 Month Notice. It states in part:

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

I find that the landlords provided the tenant with a 2 Month Notice in April 2016 to end this tenancy. This was done approximately one month prior to issuing the 1 Month Notice in May 2016. Although the tenant did not move out by June 30, 2016, the effective date of both notices, the landlords issued the 2 Month Notice first and applied for an order of possession based on it at this hearing. The landlords also provided extensive written evidence with their application, regarding the landlords' parents moving into the rental unit, the reason given on the 2 Month Notice.

Accordingly, as the landlords did not provide the tenant with compensation pursuant to the 2 Month Notice, I find that the tenant is entitled to one month's rent compensation of \$900.00 for June 2016, pursuant to section 51 of the *Act*. Therefore, I dismiss the landlords' claim for \$900.00 for June 2016 rent.

Other Rent

The tenant occupied the rental unit in July 2016 and she agreed to pay the landlord \$900.00 for rent for this month. Accordingly, I award the landlords rental arrears of \$900.00 for July 2016.

I dismiss the landlords' claim for \$900.00 for August 2016 rent, without leave to reapply. The tenant vacated the rental unit by August 1, 2016. The landlords refused to accept the keys back from the tenant, failing to mitigate their losses. The landlords could have taken possession of the unit back, inspected and completed any repairs, and advertised the unit to re-rent. The landlords failed to advertise or even attempt to re-rent the unit because they did not have the keys back.

Other Claims

The parties agreed that the tenant would return the rental unit keys to the landlords by August 12, 2016. As agreed between the parties, I issue an order of possession to the landlords, effective at 1:00 p.m. on August 13, 2016.

As advised to the landlords during the hearing, their claims for cleaning and to replace entrance and washing machine doors, totaling \$450.00, are premature. At the time of the hearing, the landlords had not received the rental unit keys back from the tenant, so they had not examined or repaired the above damages or determined whether cleaning was required. The landlords did not have invoices or receipts for the above work. Accordingly, these claims are dismissed with leave to reapply.

As the landlords were not fully successful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the tenant.

The landlords continue to hold the tenant's security deposit of \$450.00. Over the period of this tenancy, no interest is payable on the landlords' retention of the tenant's security deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's entire security deposit of \$450.00 in partial satisfaction of the monetary award made at this heading.

Conclusion

I grant an Order of Possession to the landlords effective **at 1:00 p.m. on August 13, 2016**. Should the tenant 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 order the landlords to retain the tenant's entire security deposit of \$450.00 in partial satisfaction of the monetary award made at this heading.

I issue a monetary Order in the landlords' favour in the amount of \$450.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant 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.

As the landlords did not provide any evidence regarding their application for other unspecified remedies, this application is dismissed without leave to reapply.

The landlords' application to recover the filing fee is dismissed without leave to reapply.

The landlords' application for cleaning and to replace entrance and washing machine doors, totaling \$450.00, is dismissed with 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: August 30, 2016

Residential Tenancy Branch