



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, MNSD, MNDC, FF
Tenants: CNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenants sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord; his witness and both tenants. I note that tenant SC called into the hearing after it had begun and left part way through. SC stated that he was comfortable with tenant GT representing their interests.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Section 46 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on May 20, 2016 for a 7 month fixed term tenancy beginning on June 1, 2016 for the monthly rent of \$1,180.00 due on the 1st of each month and a security deposit of \$590.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on July 6, 2016 with an effective vacancy date of July 16, 2016 due to \$1,180.00 in unpaid rent and \$26.76 in utilities following the landlord's written demand on July 1, 2016.

The landlord submitted the tenants failed to pay rent on July 1, 2016 when it was due and on July 6, 2016 he issued the Notice to End Tenancy and served it to the tenants the same day.

The tenants submitted that because July 1, 2016 was holiday they could not get all of the rent and asked the landlord to let them take it out of the security deposit that they would later top up.

The tenants submitted also that because they had a pet the landlord was no aware of he was quite upset with them and wanted to change the tenancy from a 6 month fixed term to a 3 month fixed term.

They stated that when the landlord came to serve them with the Notice, on July 6, 2016 that they tried to pay him the rent and refused to accept it unless they agreed to the reduced fixed term. The tenants stated that they have had no contact with the landlord since then, including the landlord failing to pick up rent for August 2016. The tenants acknowledge that rent for July and August has not been paid.

The landlord's witness stated that he was with the landlord on July 6, 2016 when the landlord gave the Notice to the tenants and there was no discussion around the tenants being able to pay the landlord on that date.

In support of his claim the landlord had submitted several text messages between the landlord and another person. The tenant GT explained that the other person was a friend who seemed to get along better with the landlord.

In the text messages from July 6, 2016 the friend indicates that he and the tenant SC had their portions of the rent but that tenant GT had given them his portion. The text messages from the third party ask the landlord if they can provide payment on Friday (July 8, 2016).

In addition, the tenant pointed out that there was a text messages dated July 28 and July 29, 2016 in the landlord's evidence that show the landlord asking if the tenants are going to leave the unit by August 1, 2016 as promised. The tenant submitted that this shows the landlord was seeking to end the tenancy earlier than the 6 month fixed term.

The tenant stated that he a number of text messages to show the conversations in more detail and that the landlord had left out a number text messages that would confirm their discussions about changing the tenancy to a 3 month fixed term.

Analysis

I have reviewed all documentary evidence and testimony and accept that the tenants have been served with notice to end tenancy as declared by the landlord. I accept from

the testimony of both parties that rent for the months of July and August 2016 has not been paid.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

In the case before me the tenants assert that the landlord has refused to accept the payment of rent specifically because the tenants refused to sign a new tenancy agreement. I find the tenants have provided no evidence to support this assertion.

In fact, I find from the landlord's submission of text messages that the rent was not paid on time simply because the tenants did not have all of the rent available when it was due.

I am not satisfied by the tenants' unsupported testimony that the landlord has refused to accept the payment of any amount of rent for either July or August 2016.

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

From the evidence before me, I find the tenants had failed to pay rent for the month of July 2016 on July 1, 2016 when it was due. I also find the landlord had authority under Section 46 to issue a 10 Day Notice to End Tenancy for Unpaid Rent any time after July 1, 2016.

Once the landlord issued the Notice I find the tenants had 5 days to pay the rent owed or have some authority under the *Act* to withhold the rent. I am not convinced the tenants attempt to pay the rent to the landlord or that he had refused to accept any payment of rent. I find the landlord's text messages are integral to this finding.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,460.00** comprised of \$2,380.00 rent owed and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$590.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,870.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 25, 2016

Residential Tenancy Branch