Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coronet Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by two agents for the landlord.

The landlord testified each tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on January 26, 2017 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

I note the landlord confirmed that despite submitting evidence that the male tenant vacated the rental unit prior to January 1, 2017 the male tenant has provided the dispute address as an forwarding address.

Based on the undisputed testimony of the landlord, I find that each tenant has been sufficiently served with the documents pursuant to the *Act* at addresses where they either resided at or had provided to the landlord as a forwarding address.

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; to recover an arbitration administration fee; 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 *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 July 28, 2014 for a month to month tenancy beginning on August 1, 2014 for the monthly rent of $1,150.00 due on the 1st of each month and a security deposit of $575.00 was paid. The agreement include a specific clause stating:

    - "In the event that the Landlord applies for an arbitration at the Residential Tenancy Branch, and the Landlord is successful in pressing its suit, the tenant will be charged the cost thereof. In the event of an arbitration occurring in which the landlord must attend, and the cause of the arbitration arises from the tenant's non-payment of rent or damage to the property or other breach of this agreement, the tenant agrees to pay the landlord a service charge of $80.00 (see addendum (2) and initial). The tenant agrees that this charge is not a penalty but is a reasonable accounting for extra costs incurred by the Landlord." [reproduced as written];
- Copies of Notices of Rent Increase during the tenancy that increased the rent to $1,212.93 for all relevant periods of this claim; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on January 4, 2017 with an effective vacancy date of January 14, 2017 due to $1,756.83 in unpaid rent.

Evidence and testimony submitted by the landlord indicates the tenants failed to pay the full rent owed for the months of December 2016 and January 2017 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent personally on January 4, 2017.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days. The landlord acknowledges receipt of a payment of $500.00 from the female tenant in the week prior to this hearing.

Analysis

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*.

Section 46(4) allows the tenant to either pay the rent or file an Application for Dispute Resolution to dispute the notice within 5 days of receipt of the notice.

Section 46(5) states that if a tenant who has received a notice under this section does not pay the rent or make an Application for Dispute Resolution to dispute the notice within the allowed 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on January 4, 2017 and the effective date of the notice was January 14, 2017. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenants are conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

I also accept the landlord's undisputed testimony that the tenants currently owe the landlord $1,256.83 after consideration of the $500.00 payment made.

Section 6(3) of the *Act* stipulates that a term in a tenancy agreement is not enforceable if the term is inconsistent with the *Act* or regulations; the term is unconscionable; or the term is not expressed in a manner that clearly communicates the rights and obligations under it. Section 3 of the Residential Tenancy Regulation states that a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party.

I find the clause in the landlord's tenancy agreement that requires the tenant to pay an "arbitration administration service charge" is an oppressive term. I make this finding, in part, because I find that despite the wording of the agreement, the charge is in fact a penalty against the tenant. I also find that the term is inconsistent with any allowable charges or fees that may be included in a tenancy agreement under the *Act* and regulations.

And finally, I find that the explanation in the addendum of the tenancy agreement outlines the costs associated with the landlord pursuing a claim against a tenant which are not recoverable under the *Act* as they constitute the costs of doing business and are not directly linked to a breach of the *Act,* regulation or tenancy agreement.

As a result, I dismiss the landlord's claim for an "arbitration administration service charge".

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 **$1,356.83** comprised of $1,256.83 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 $575.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **$781.83**. 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: February 22, 2017

Residential Tenancy Branch