



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EASYRENT REAL ESTATE SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenants – CNR, CNL, MNDC

For the landlord – OPR, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied to cancel a 10 Day Notice to End Tenancy for unpaid rent or utilities and a Two Month Notice to End Tenancy for landlord's use of the property. The landlord applied for Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

At the outset of the hearing the parties advised that the tenants are no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession. The tenant attending withdrew their application to dispute the 10 Day Notice. The tenant agreed they had filed an application to dispute a Two Month Notice when in fact it was to dispute a One Month Notice. This part of their application was also withdrawn.

One of the tenants and two agents for the landlord (the landlord) attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenants provided documentary

evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on October 01, 2016 for a fixed term tenancy that was not due to end until September 30, 2017. Rent for this unit was \$2,900.00 per month due on the 1st of each month in advance. The tenants paid a security deposit of \$1,450.00 on September 20, 2016. The tenancy ended on February 25, 2017.

The landlord's application

The landlord testified the tenants had given notice to end their tenancy on October 31, 2016 which was effective November 30, 2016. The tenants later withdrew this notice. In February, 2017 the tenants failed to pay rent and a 10 Day Notice to End Tenancy for unpaid rent or utilities (the Notice) was served upon the tenants on February 08, 2017. A copy of this Notice has been provided in documentary evidence. The Notice indicates that rent of \$2,900.00 was outstanding for February. The tenants had five days to either

pay the outstanding rent or file an application to dispute the Notice or the tenancy would end on February 22, 2017.

The landlord testified that the tenants did not pay the outstanding rent and did not file an application until February 17, 2017. The tenants did vacate the rental unit on February 25, 2017 and a move out condition inspection of the unit was conducted with the tenants on February 27, 2017. The landlord testified that as they were unsure when the tenants were going to vacate the rental unit, as they had previously given notice and then changed their minds, the landlord was unable to start to advertise the unit until the tenants had vacated. The unit was advertised as soon as the tenants moved out and was re-rented on March 15, 2017. The landlord therefore seeks to recover the unpaid rent for February of \$2,900.00 and a loss of rent for 15 days in March of \$1,450.00. The landlord amends their application to the amount of \$4,350.00.

The tenant agreed he did not pay rent for February, 2017 because the landlord had given the tenant a One Month Notice to vacate the unit on January 11, 2017.

The tenants' application

The tenant testified that the landlord had sent him an email telling them not to occupy the rental unit in December. The tenants only occupied the unit for a few days in December and therefore seek to recover rent for December, 2016 and January, 2017. The tenants also seek to recover their security deposit but the tenant agreed he has not provided a forwarding address to the landlord and has not filed an application to recover the security deposit.

The landlord testified that no email was sent to the tenants saying they cannot occupy the rental unit in December. The tenants were actually operating an Air B&B from their unit. The Strata informed the landlord of this and as the landlord must protect their tenants they asked for more evidence of this from the Strata. The Strata provided additional evidence and the landlords also inspected the unit and found evidence that the unit was set up like a hotel and was being used as an Air B&B. After the landlord

was satisfied of this they served the tenants with a One Month Notice to End Tenancy on January 11, 2017. That Notice had an effective date of February 28, 2017. The tenants still had possession of the rental unit in December, January and February. The landlord therefore disputed the tenants application to recover rent paid for December and January as it is the tenants` legal obligation under the tenancy agreement to pay the rent.

The tenant disputed that they were operating an Air B&B from the rental unit and testified that it was another tenant doing this.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

With regard to the landlord's claim for unpaid rent; I refer the parties to s. 26 of the *Act* which states:

26. 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.

This was a fixed term tenancy and as such the tenant is responsible for the rent until either the legal end of the tenancy indicated on the tenancy agreement or the date the rental unit is re-rented. I am satisfied from the abundance of documentary evidence and testimony before me that the tenant failed to pay rent for February, 2017 and that the rental unit was not re-rented until March 15, 2017. Consequently, I find in favor of the landlords amended application to recover rent for February, 2017 of **\$2,900.00** and a loss of rental income for March, 2017 of **\$1,450.00**.

With regard to the tenants application to recover rent for December, 2016 and January, 2017. I am satisfied that the tenant continued to have possession of the rental unit until the tenancy was legally ended on February 25, 2017 when the tenant moved out of the unit and gave vacant possession to the landlord. The tenant had been served a One Month Notice on January 11, 2017 and in accordance to that Notice the tenants had 10 days to file an application to dispute the Notice and failed to do so until February 17, 2017. The tenants were also served a 10 Day Notice on February 08, 2017. The tenants had five days to either pay the outstanding rent or dispute the Notice and they failed to pay the outstanding rent and did not file their application to dispute the Notice until February 17, 2017.

The tenants are not entitled to recover rent that they must legally pay to the landlord. If the tenants were no longer residing in the rental unit during December, 2016, I have insufficient evidence to support this claim and it would make no difference to the outcome as they were not legally evicted until February 22, 2017. Consequently the tenants' application to recover rent for December and January is dismissed.

The tenant had included on their Monetary Order Worksheet a claim to recover the security deposit of \$1,450.00. The tenants have not made a proper application to recover the security deposit and even if they had, their application would be considered premature as they have not provided their forwarding address in writing to the landlord. I will therefore decline to deal with this and advised the tenant to provide their forwarding address in writing to the landlord.

The landlord agreed to accept the tenants forwarding address by email at the hearing so the matter of the security deposit can be resolved.

As the landlord's application has merit I find the landlord is entitled to recover the filing fee of **\$100.00** pursuant to s. 72 (1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$4,450.00 pursuant to s. 67 and 72(1) of the Act. The Order must be served on the respondents. Should the respondents fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court. 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 15, 2017

Residential Tenancy Branch