



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HMJ LAND CO. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenants for the cost of this application.

At the outset of the hearing it was determined that the landlords have already obtained an Order of Possession for the rental unit at a hearing held on January 04, 2017. This Order is effective on March 31, 2017. The tenant advised they vacated the rental unit on March 10, 2017 and only have some possession in the yard that they could not remove because of the snow. Therefore, the landlord's lawyer withdraws the application for an Order of Possession.

One of the named tenants attended the hearing and represented the other named tenant. The landlords were represented by their lawyer. The parties in attendance were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant 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

Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The parties agreed this tenancy started on August 01, 2010. This was a verbal agreement between the parties for the tenants to rent this unit on a month to month basis for a monthly rent of \$500.00 due on the 1st of each month.

The landlord's lawyer testified that they had a previous hearing on January 04, 2017 concerning the tenant's application to cancel a Two Month Notice to End Tenancy or landlord's use of the property. (The file number for that hearing is located on the first page of this decision). At that hearing the parties had reached a settlement whereas the parties agreed the tenants would vacate the rental unit on March 31, 2017 by 1.00 p.m. and agreed that a move out inspection would take place that day.

The landlord's lawyer testified that the tenants failed to pay any rent for January and February, 2017. The tenants were notified to send their rent cheques to the landlord's lawyers office because the landlord was out of the country. The tenants were advised to do this in February, 2017. No rent cheques were received for January or February, 2017 so a 10 Day Notice to End Tenancy for unpaid rent (the Notice) was served upon the tenants on February 02, 2017 by registered mail. The registered mail was uncollected by the tenants so it was served again by a process server on February 15, 2017. This Notice advised the tenants that there was outstanding rent of \$1,000.00 and the Notice had an effective date of February 12, 2017.

The landlords seek a Monetary Order for \$1,000.00. The landlord's lawyer testified that as the tenants were served the Notice then the landlord also seeks to amend their application to include unpaid rent for March, 2017 of \$500.00 and seeks to recover the filing fee of \$100.00.

The tenant testified that they did not send any rent cheques to the landlord or to the landlord's lawyer's office as the landlord who is also the tenant's mother told the tenants they did not have to pay rent for January or February, 2017.

The landlord's lawyer testified that she has no knowledge of any arrangement between the landlord and the tenants that allowed the tenants to withhold their rent for January and February, 2017. The landlord's lawyer testified that when the tenants informed her of this she spoke to the landlord's power of attorney who assured the landlord's lawyer that the landlord did expect rent to be paid for those months.

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 application to recover unpaid rent for January, February and the landlord's lawyers request to amend the landlord's application to recover rent for March, 2017. 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.

The tenant testified that the landlord said they did not have to pay rent for January and February, 2017 and agreed that the rent was not paid for these months; however, the tenants have the burden of proof to show that an agreement of this nature was in place and I have insufficient evidence to show that any agreement was made between the tenants and the landlord concerning the rent for these months. I must therefore find in favour of the landlords' claim to recover the rent for January and February, 2017 to the amount of **\$1,000.00**.

I have considered the landlord's lawyers request to amend their application to recover unpaid rent for March, 2017; as the landlord had served the tenants with a Two Month Notice to End Tenancy for landlord's use of the property and an agreement was made between the parties that the tenancy would end on March 31, 2017 then the Two Month Notice remains in force and effect and as such the tenants are entitled to their last month's rent for free. As their last month is March, 2017 then the tenants are not required to pay rent for this month. Consequently, I have not permitted the landlord to amend their application to recover unpaid rent for March, 2017 as this is the tenants' compensation for the Two Month Notice in accordance with s. 51 of the *Act*.

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 monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,100.00** 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.

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 20, 2017

Residential Tenancy Branch