



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, OPR

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed January 29, 2017 wherein the Landlord sought an Order of Possession and Monetary Order based on a 10 Day Notice to End Tenancy issued on January 20, 2017 (the "Notice") and to recover the filing fee.

The hearing was conducted by teleconference on March 2, 2017. Both Tenants and the Landlord's agent, R.W., called into the hearing. Introduced in evidence was a letter from the Landlord confirming R.W.'s status as agent for the Landlord. The parties were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

During the hearing the Tenants confirmed the legal spelling of their names. Pursuant to section 64(3)(c), I have amended the Landlord's Application for Dispute Resolution, as well as the style of cause on this my Decision and resulting Orders, to accurately reflect the Tenants' legal names.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to monetary compensation from the Tenants?
3. Should the Landlord recover the filing fee?

Background and Evidence

R.W. testified that this tenancy began October 1, 2016. He stated that monthly rent is payable in the amount of \$1,000.00 per month. R.W. testified that the Tenants held a “manager position” in which they received a \$100.00 deduction in their rent. Accordingly, they were to pay \$900.00 in rent.

R.W. testified that in November the Tenants were no longer credited the managerial deduction as they failed to perform any of the required managerial duties and as such the Landlord sought the full amount of rent for November 2016 and all months following.

R.W. testified that the Tenants also failed to pay rent for December 2016 and January 2017 at which time the Landlord issued the Notice. R.W. confirmed that he personally served the Notice on the Tenants on January 20, 2017.

The Tenants applied to dispute the Notice and the hearing of their application occurred on February 21, 2017. As the Tenants failed to call into the hearing on February 21, 2017, their application to cancel the Notice was dismissed.

Introduced in evidence by the Landlord was a Monetary Orders Worksheet dated January 31, 2017 wherein the Landlord confirmed he sought the following:

October 2016 rent	\$900.00
November 2016 rent	\$1,000.00
December 2016 rent	\$1,000.00
January 2017 rent	\$1,000.00
TOTAL	\$3,900.00

During the hearing R.W. stated the Tenants also failed to pay the February 2017 and March 2017 rent and as such the Landlord sought a further \$2,000.00.

R.W. confirmed that the Landlord sought compensation for unpaid rent in the amount of \$5,900.00 in addition to the filing fee for a total of \$6,000.00.

C.J. testified on behalf of the Tenants. She confirmed that they are still in the rental unit. She further confirmed that they have not paid any rent to the Landlord. She stated that she believed that monthly rent was payable in the amount of \$460.00, which she claimed was confirmed on a “sheet” provided by the previous tenant, S.W. This sheet was not provided in evidence. C.J. further stated that they met with S.W., who was then

acting as a manager for the Landlord, who confirmed the monthly rent of \$460.00 as well as the fact they were not required to pay rent for October 2016 nor were they expected to pay a security deposit due to work that was required on the rental unit. She further stated that they were to do renovations to the rental unit, the cost of which was to be taken from their monthly rent.

C.J. testified that she has never met the owner, S.W., and only met with R.W., on October 23, 2016.

M.M. also testified on behalf of the Tenants. He stated that they did not pay rent as they did not know what their rent was. He stated that they believed that they would sit down with the Landlord at some point and confirm the amount of rent, as well as do the "walk through". When I asked him why they did not pay the \$460.00 C.J. claimed was the monthly rent, M.M. stated that he believed that the Landlord would have pursued an eviction even if they paid this amount.

In reply, R.W. reiterated that the monthly rent was \$1,000.00 per month.

Introduced in evidence was an unsigned letter dated January 23, 2017 from S.W. confirming the monthly rent of \$1,000.00 per month less \$100.00 for a management fee. Also introduced in evidence were emails from S.W. to the Landlord confirming these amounts.

In response to the Tenants' claims that they were permitted to reduce their rent by the cost of renovations, R.W. further stated that there was supposed to be a list of items provided by the Tenants for renovations which they were to discuss *prior* to any work being completed. R.W. stated that the only quote received by the Tenants was for pest removal. He confirmed no agreement was reached regarding work to be done on the rental unit, nor was any agreement reached regarding any compensation.

R.W. further confirmed that he has not received any money from the Tenants.

Analysis

Based on the evidence and testimony before me, and on a balance of probabilities I find as follows.

I find the Tenants were personally served the Notice on January 20, 2017. The Notice informed the Tenants they had five days in which to pay the outstanding rent or make an application to dispute the Notice.

Although the Tenants applied to dispute the Notice they failed to call into the hearing on February 21, 2017, and consequently their application to cancel the Notice was dismissed.

I have reviewed the Notice and find it complies with section 52 of the *Residential Tenancy Act*.

Section 55 of the *Act*, reads as follows:

Order of possession for the landlord

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Pursuant to the above, I grant the Landlord an Order of Possession effective two (2) days after service on the Tenants. The Landlord must serve the Order of Possession on the Tenants and may file and enforce the Order in the B.C. Supreme Court.

The Notice indicates the sum of \$3,900.00 was owed for rent as of January 1, 2017.

I accept the Landlord's evidence that monthly rent was payable in the amount of \$1,000.00. I further accept that the Tenants were to be credited \$100.00 for managing the property. I make these findings based on the following.

The parties agreed that the former tenant, S.W., was responsible for showing the rental unit to the Tenants and confirming the monthly rent. Documentary evidence submitted by the Landlord includes a letter from S.W. dated January 23, 2017, and emails from S.W. dated January 3, 2017 and January 21, 2017, confirming the rent of \$1,000.00 per month less \$100.00 for property management duties.

Also introduced in evidence was a document titled "Property Management Duties" confirming a \$100.00 deduction from monthly rent for specific duties.

The Tenants were inconsistent in their evidence regarding the amount of rent owing. Tenant C.J. testified the rent was \$460.00 per month, yet failed to submit any documentary evidence to support this claim. The Tenant P.M. testified that he did not know the amount of rent to be paid.

Also introduced in evidence as an email dated January 20, 2017 from another occupant of the rental property, S.M.; in this email, S.M. writes that the Tenants were to take over building manager responsibilities yet they failed to do so, save and except for collecting rent.

While the Landlord may have been dissatisfied with the managerial work done by the Tenants, the Landlord failed to submit any evidence to support a finding that the Tenants were informed they were no longer going to be credited the \$100.00 for managerial duties. Accordingly, I find the Tenants were to pay the sum of \$900.00 per month in rent.

I find that the Tenants failed to pay rent as required. Pursuant to section 26 of the *Act*, a Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent. In this situation I find that the Tenants had no authority under the *Act* to not pay rent.

I therefore award the Landlord the sum of **\$5,500.00** calculated as follows:

October 2016 rent	\$900.00
November 2016 rent	\$900.00
December 2016 rent	\$900.00
January 2017 rent	\$900.00
February 2017	\$900.00
March 2017	\$900.00
Filing fee	\$100.00
TOTAL	\$5,500.00

The Tenants submitted that they made repairs and performed renovations to the rental unit. They further submitted that the Landlord agreed to reduce their outstanding rent payments by the amounts of these repairs and renovations. The Landlord's agent

testified that although such discussions occurred, the Tenants failed to provide estimates of any required work, and no formal agreement was reached. I am unable to find, based on the evidence before me, that there was an agreement that the Tenants could reduce their monthly rent payments by a specific amount. I find any such agreement to be outside the parameters of this tenancy.

Conclusion

The Landlord is granted an Order of Possession and a Monetary Order in the amount of \$5,500.00. The Landlord must serve these Orders on the Tenants and may file the Order of Possession in the B.C. Supreme Court and the Monetary Order in the B.C. Provincial Court where those Orders may be enforced as an Order of those respective Courts.

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 02, 2017

Residential Tenancy Branch