



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNDC, FF

Introduction:

A hearing was convened under the *Residential Tenancy Act* (the “Act”) to deal with cross-applications based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 7, 2017 (the “10 Day Notice”). The landlords applied for an order of possession and a monetary order for unpaid rent.

The tenant applied for an order cancelling the 10 Day Notice, for compensation for loss arising from breach of the Act, regulation, or tenancy agreement, and for recovery of the application filing fee.

Both of the named landlords attended the hearing. One of the named tenants, JA, also attended. Both parties were given a full opportunity to be heard, to present documentary evidence and to make submissions.

At the onset of the hearing JA advised that AB was no longer involved in the tenancy. The landlords contended that he was, to the degree that he has signed a Mutual Agreement to End Tenancy on June 30, 2017, as had JA. I have not removed AB from the style of cause.

The landlords acknowledged receipt of the tenant’s application and notice of hearing. The landlords testified that they served JA (but not AB) with their application, amended application, and notice of hearing by registered mail sent June 17, 2017. The landlords submitted a receipt for the registered mail. Although the registered mail was unclaimed, the tenant is deemed to have been served with the landlords’ materials on June 23, five days after they were mailed, pursuant to s. 90 of the Act. Refusal to accept registered mail is not a ground for review under the Act.

Issues to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice?

Is the tenant entitled to compensation for loss of quiet enjoyment?

Are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary award for unpaid rent?

Is either party entitled to recovery of the application filing fee?

Background and Evidence

According to the written tenancy agreement in evidence and the agreed upon facts, this tenancy began September 1, 2016. Both of the named tenants occupied the rental unit under other terms prior to this date. This is a month to month tenancy with rent of \$2,500.00 payable on the first day of each month. A security deposit of \$1,250.00 was paid at the beginning of the tenancy and remains with the landlord.

The landlords served JA with the 10 Day Notice on June 7, 2017. A Proof of Service document signed by their daughter was in evidence.

It was agreed that the tenant paid only \$250.00 of the monthly rent for June, and that he has not paid rent since. Both JA and AB signed a Mutual Agreement to End Tenancy effective June 30, 2017. However, JA at least has not vacated. It was agreed that the tenant currently owes \$7,250.00 in rent for June, July, and August, 2017.

The tenant stated that he had been withholding rent because the landlords have refused to compensate him for several days of construction noise. He testified that the landlords replaced a deck on the rental property and that the construction noise prevented him from sleeping. He says that he generally works until 4:00 or 5:00 am on his computer and then tries to get 6-8 hours of sleep. He calculates the daily rent at \$83.00, and says that he was disrupted for 7 or 8 days, and that he should have to pay only 50% of the daily rate for those days.

He also appeared to want to claim for loss of use of the deck for the month that it was blocked off as a safety hazard. However the tenant has not clearly quantified this claim, and stated that in total he seeks only \$207.00. It appears, then, that the tenant is claiming for only 5 days of construction disruption.

The landlords submitted a construction schedule setting out the days and times during which the deck was constructed. It shows that the contractor did not generally begin until about 9:00 am. They also say that they have text correspondence from the tenant documenting his travel to other cities over the time of the construction and that he was only at the rental unit for 3 days of construction. Those texts were not in evidence.

Analysis

Section 46(5) of the Act provides that if a tenant does not pay the amount outstanding or apply to dispute a 10 Day Notice within five days of the 10 Day Notice, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must vacate the rental unit by that date.

In accordance with section 46(5) of the Act, the failure of the tenants to dispute the notice within five days led to the end of this tenancy on June 17, 2017, the effective date on the 10 Day Notice. The named tenants and anyone on the premises were required to vacate the premises by that date.

As this has not occurred, I find that the landlords are entitled to a two (2) day order of possession, pursuant to section 55 of the Act. I find that the landlord's 10 Day Notice complies with section 52 of the Act.

Sections 7 and 67 of the Act establish that a tenant who does not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

It was agreed that there is \$7,250.00 owing, and I award the landlords that amount, less the deductions set out below.

The tenant is entitled to quiet enjoyment of the rental unit and I accept his evidence that his sleep was disrupted for a period of time over the construction of the deck.

However, I prefer the landlords' evidence as to how many days the tenant was actually present at the rental unit during the construction. This is because the landlords' submissions and evidence was comprehensive and detailed, and I accept that they have been keeping accurate account of what has been going on. Accordingly, I award the tenant 50% his daily rent of \$83.00 for a period of three days, for a total of \$124.50.

As both parties have had some success, I decline to award either the application filing fee.

The landlords continue to hold the tenants' security deposit of \$1,250.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the Act, I authorize and order the landlords to retain the security deposit in partial satisfaction of the monetary claim.

Conclusion

The landlord's 10 Day Notice is upheld. I grant an order of possession to the landlords effective **two (2) days after service**. Should the tenants or anyone on the premises fail to comply with this order, it may be filed and enforced as an order of the Supreme Court of British Columbia.

I issue a monetary order against the one tenant that the landlords have served with the application, in the following terms, which allow the landlords to obtain a monetary award for unpaid rent, and to retain the security deposit for this tenancy, and which also allow the tenant his compensation for loss of quiet enjoyment :

| Item | Amount |
|-----------------------------|-------------------|
| Unpaid rent | \$7,250.00 |
| Less tenant's claim | -\$124.50 |
| Less security deposit | -\$1,250.00 |
| Total Monetary Order | \$5,876.00 |

The tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court and 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 s. 9.1(1) of the Act, and is final and binding unless otherwise specified in the Act.

Dated: August 10, 2017

Residential Tenancy Branch