



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 899462 BC LTD
STRACHAN APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNR, MNSD, MNDC, FF, MT, CNC

Introduction

This hearing was scheduled to hear applications from both the landlords and the tenants pursuant to the Residential Tenancy Act (the “*Act*”).

The landlords applied for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent and damages pursuant to section 67;
- authorization to retain all or a portion of the tenants’ security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- more time to make an application to cancel the landlords’ 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord’s 1 Month Notice pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The tenants did not attend this hearing which lasted 15 minutes. The corporate landlords and named personal landlord were represented at the hearing by their agent GL (the “landlord”) who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that the 1 Month Notice dated June 8, 2017 was personally served on the tenants on that date. Pursuant to section 88 of the *Act*, I find that the tenants were duly served with the landlords' 1 Month Notice on that date. The landlord testified that the landlords' application for dispute resolution dated August 24, 2017 was personally served on the tenants on that date. Pursuant to section 89 of the *Act*, I find that the tenants were duly served with the landlords' application for dispute resolution on that date.

At the outset of the hearing the landlord testified that the tenants have paid the rental arrears and they withdrew the portions of the application seeking a monetary order for unpaid rent and damages.

Issue(s) to be Decided

Are the tenants entitled to more time to file their application for dispute resolution? Should the landlords' 1 Month Notice be cancelled? If not are the landlords entitled to an Order of Possession? Are the landlords entitled to retain the security deposit and pet damage deposit for this tenancy? Are the landlords entitled to recover the filing fee of this application from the tenants? Are the tenants entitled to a monetary award as claimed? Are the tenants entitled to recover the filing fee of this application from the landlords?

Background and Evidence

The landlord provided undisputed evidence as the tenants failed to attend the hearing. The landlord testified that this periodic tenancy began in April, 2015. The monthly rent is \$780.00 payable on the first of each month. A security deposit of \$390.00 and a pet damage deposit of \$390.00 were paid by the tenants and are still held by the landlords. The tenants still reside in the rental unit as at the date of the hearing.

The landlord testified that the tenants have been regularly late in paying their monthly rent. The landlord said that the tenants were late paying rent for June, April, and February, 2017. The landlord issued 10 Day Notices to End Tenancy when the tenants are late in making rent payment. Copies of the 10 Day Notices were submitted into written evidence.

Analysis

The tenants did not attend the hearing which was scheduled by conference call at 11:00am. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Consequently I dismiss the tenants' entire application without leave to reapply.

Section 55 of the *Act* provides that:

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.

As I have dismissed the tenants' application, and I find that the landlords' 1 Month Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provide the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end, I find that the landlords are entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

I find it is premature to make an order regarding the disposition of the tenants' security deposit and pet damage deposit. The tenants retain the right to make repairs to the rental unit and clean it prior to vacating. I dismiss this portion of the landlords' application with leave to reapply.

As the landlords' application was primarily successful the landlords are entitled to recover the filing fee of this application from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain \$100.00 of the tenants' \$390.00 security deposit in satisfaction of the monetary award issued in the landlords' favour.

Conclusion

I dismiss the tenants' application.

I grant an Order of Possession to the landlords effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlords are authorized to retain \$100.00 of the tenants' security deposit in satisfaction of their monetary award. The tenants' security deposit is lowered from \$390.00 to \$290.00.

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: September 6, 2017

Residential Tenancy Branch