



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenants confirmed that they were handed the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on October 10, 2017, I find that they were duly served with that Notice in accordance with section 88 of the *Act*.

As the tenants confirmed that they were handed copies of the landlords' dispute resolution hearing and written evidence packages on November 1, 2017, I find that they were duly served with these packages on that date in accordance with sections 88 and 89 of the *Act*.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

Although the landlords entered into written evidence an inaccurately worded copy of the original Residential Tenancy Agreement, both parties agreed that this tenancy began on March 1, 2012. They also agreed that the monthly rent was then set at \$976.00, to be

paid in two equal instalments of \$438.00, on the first and fifteenth of each month. The parties agreed that the landlords continue to hold the tenants' \$475.00 security deposit, paid when this tenancy began. As the landlords were only legally allowed to charge one-half of the monthly rent as a security deposit, I advised the parties that the landlords have retained a security deposit that was \$37.00 in excess of the legal amount of \$438.00 they could have obtained from the tenants when this tenancy began.

On July 9, 2017, the parties signed a new Residential Tenancy Agreement that took effect on July 1, 2017. In this new Agreement, the tenants agreed to pay \$500.00 on the first and fifteenth of each month, totalling \$1,000.00 each month. At that time, the tenants also signed a document confirming that they would repay the amount of \$1,026.00 in rent then owing by October 1, 2017. In the event that this amount was not paid by October 1, 2017, the tenants agreed to vacate the rental unit.

The tenants confirmed the landlords' advocate's assertion that \$150.00 in rent remains owing from May 2017 and the June 2017 payments of \$438.00 due on the first and fifteenth of that month were not paid by the tenants. The tenants did not dispute the landlords' claim that the \$1,026.00 identified by the landlords as owing in the 10 Day Notice identified remains unpaid. Tenant CR testified that the tenants have not filed an application to cancel the 10 Day Notice.

At the hearing, Tenant BR testified that the landlords have not been issuing receipts for rent paid during this tenancy. The landlords' advocate denied this allegation. The tenants did not dispute the landlord's advocate's testimony that the landlords have accepted payments since the 10 Day Notice was issued, for use and occupancy only, and not to reinstate this tenancy.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding resolution of the landlords' application:

1. The tenants agreed that \$1,026.00 in rent remains owing to the landlords for the period of May and June 2017.

2. The landlords agreed to apply \$37.00 from the tenants' security deposit to reduce the amount of rent outstanding from \$1,026.00 to \$989.00.
3. In addition to their regular bi-monthly rent payments, the tenants agreed to pay the landlords an additional \$100.00 every two week by the first and fifteenth of each month until the full \$989.00 in rental arrears have been paid. The final of these payments will be \$89.00 and not the regular \$100.00 payment.
4. The landlords agreed to accept payments in the amount of \$500.00 every two weeks by the first and fifteenth of each month for use and occupancy only until such time as the amount of arrears outlined in Clause 3 of this agreement have been paid in full.
5. The landlords agreed to issue receipts for all payments made by the tenants towards this tenancy.
6. Both parties agreed that this tenancy will end within two days of any failure of the tenants to abide by the monthly repayment terms outlined in Clause 3 of this agreement. The tenants agreed to vacate the rental within two days of any failure to abide by the terms of Clause 3 of this agreement.
7. Both parties agreed that the remaining value of the security deposit for this tenancy is \$438.00.
8. Both parties agreed that the terms as outlined above constituted a final and binding resolution of all issues identified in the landlords' application and that they entered into this agreement of their own free will and volition and without any element of coercion.

Conclusion

In the event that the tenants abide by the monetary terms as established in Clause 3 of this settlement agreement as outlined above, this tenancy continues until ended in accordance with the *Act*.

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlords **only** if the tenants do not comply with the monetary terms as established in Clause 3 of their settlement agreement **and** fail to vacate the rental premises in accordance with Clause 6 of their settlement agreement. This **Order of Possession expires on April 15, 2018** and it cannot be served upon the tenants after **April 30, 2018**, as that is the last month for the monetary agreement outlined above. The landlords are provided with these Orders in the above terms and the tenant(s) must be served with these Orders as soon as possible after there is a breach of the tenants' commitments outlined in Clauses 3 and 6 of their settlement agreement. Should the tenant(s) fail to comply with this Order,

this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlords' favour in the amount of \$989.00, the amount currently owing for this tenancy. I deliver this Order to the landlords in support of the above agreement for use **only** in the event that the tenants do not pay the landlords in accordance with the above monetary agreement. The landlords are only allowed to collect that portion of the above monetary agreement that remains unpaid at that time. The landlords are provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible after the tenants do not pay the landlords in accordance with the above monetary agreement. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I order the remaining value of the tenants' security deposit reduced from \$475.00 to \$438.00.

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: November 23, 2017

Residential Tenancy Branch