Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR MNRLS FFL
For the tenants: CNR MNDCT OLC FFT

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution ("applications") under the *Residential Tenancy Act* (*"Act"*). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, to retain the tenants' security deposit towards rent owing and to recover the cost of the filing fee. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 13, 2018 ("10 Day Notice"), for an order directing the landlord to comply with the *Act,* regulation or tenancy agreement, to suspend or set conditions on the landlord's right to enter the rental unit, for a monetary order of $6,000.00 for money owing for damage or loss under the *Act,* regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord, a support person for the landlord, and the tenants attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all 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.

Three witnesses for the tenants ("witnesses") also attended the hearing with witness KO disconnecting from the hearing within five minutes of the start of the hearing and did not call back into the hearing. None of the witness testified.

Preliminary and Procedural Matters

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure ("rules") authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenants indicated several matters of dispute on their application, the most urgent of which is the application to set aside the 10 Day Notice which is why the parties had their hearing scheduled on an urgent basis, as hearings are scheduled on a priority basis for orders of possession, emergency repairs and health and safety issues. I find that not all the claims on the tenants' application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request to set aside the 10 Day Notice and the tenants' application to recover the filing fee at this proceeding. The balance of the tenants' application is **dismissed, with leave to re-apply.**

<u>Issues to be Decided</u>

- Is the landlord entitled to an order of possession under the *Act?*
- Should the 10 Day Notice be cancelled or upheld under the *Act?*
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is either party entitled to the recovery of the cost of the filing fee under the *Act?*

<u>Background and Evidence</u>

At the outset of the hearing, the parties agreed that a written tenancy agreement did not exist and that the tenancy was verbal in nature. The parties agreed that the tenants moved into the rental unit on April 11, 2017 and that starting March 1, 2017 monthly rent of $1,300.00 was due on the first day of each month. The parties agreed that the tenants paid the landlord cash up to February 2018. There is a dispute on rent paid since February 2018. There is no dispute that the tenants paid a $650.00 security deposit at the start of the tenancy which the landlord has claimed against for unpaid rent.

The tenants' filed their application to cancel the 10 Day Notice on March 16, 2018 which is three days after it was dated and received on March 13, 2018 by the tenants. The parties agreed that the 10 Day Notice indicates that $1,300.00 was due March 1, 2018. The tenants claim they knocked on the landlords door upstairs on March 1, 2018 and

March 3, 2018 but could not recall a specific time and used words like "I believe" when trying to recall when they knocked on the landlord's door. The landlord denies that any knocks were made on their door and that any attempt has been made by the tenants to pay March, April or May 2018 rent and that the tenants. The tenants also stated that the landlord "still has things to address" but denied that is why they did not pay rent.

The effective vacancy date listed on the 10 Day Notice was March 23, 2018 which has passed. The landlord is seeking unpaid rent of $1,300.00 for March, April and May 2018 plus the filing fee.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

10 Day Notice – I find that the tenants' testimony to be vague and inconsistent. First they stated that they did not pay rent due to the landlord having things to address and then quickly stated that they attempted to pay twice but that the landlord did not answer the door. The tenants failed to provide any evidence that they attempted to place a cheque under the landlord's door or make other attempts to pay rent. The tenants then later changed their testimony to indicate that they did not withhold rent due to the things that the landlord still has to address which I find impacts their credibility negatively and I do not find the tenants credible as a result. I find the landlord was consistent with her testimony and find her to be credible.

Therefore, I uphold the landlord's 10 Day Notice as I find the 10 Day Notice is valid and that based on the landlord's testimony that the tenant's owe $1,300.00 for unpaid rent for all three months of March, April and May 2018 inclusive for a total in unpaid rent and loss of rent of **$3,900.00.** I find the tenancy ended on March 23, 2018 which was the effective vacancy date of the 10 Day Notice. Section 55 of the *Act* applies and states:

> **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.**

[My emphasis added]

As a result and taking into account that I find the 10 Day Notice complies with section 52 of the *Act*, I grant the landlord an order of possession effective **two (2) days** after service on the tenants as the tenants continue to occupy the rental unit.

Unpaid rent – Based on the above, I find the tenants have breached section 26 of the *Act* which states:

> **Rules about payment and non-payment of rent**
>
> 26 (1) **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.
>
> [My emphasis added]

It is not up to the landlord to try and locate the monthly rent, it is up to the tenants to pay it and I don't accept the tenants' evidence that they made two attempts and were denied the ability to pay rent. I find the tenants' version of events to be illogical. As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the **$100.00** filing fee pursuant to section 72 of the *Act.*

I dismiss the tenants' application without leave to reapply due to insufficient evidence. I do not grant the filing fee as a result.

Monetary Order – I find the landlord has established a total monetary claim of **$4,000.00** comprised of $3,900.00 in rent arrears plus the recovery of the cost of the $100.00 filing fee. Pursuant to section 72 of the *Act,* I authorize the landlord to retain the tenants' full security deposit of $650.00 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **$3,350.00.**

Conclusion

The tenant's application is dismissed, without leave to reapply, as indicated above. This does not include the portion of the tenants' claim that was dismissed with leave to reapply as indicated above.

The landlord's application is successful. I find the tenancy ended on March 23, 2018. The landlord has been granted an order of possession effective two (2) days after service on the tenants. The landlord must serve the tenants with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has established a total monetary claim of $4,000.00 as described above. The landlord has been authorized to retain the tenants' full security deposit of $650.00 which has accrued no interest, in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of $3,350.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 15, 2018

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Residential Tenancy Branch