Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR MNR FF
Tenant: CNR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the "*Act*").

The Landlords' Application for Dispute Resolution was made on June 18, 2018, and was amended by an Amendment to an Application for Dispute Resolution, dated July 10, 2018 (the "Landlords' Application"). The Landlords applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The **Tenant's** ~~Tenants'~~ Application for Dispute Resolution was made on June 8, 2018 (the "**Tenant's** ~~Tenants'~~ Application"). The **Tenant** ~~Tenants~~ applied for the following relief, pursuant to the *Act*:

- an order cancelling a notice to end tenancy for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Landlords were represented at the hearing by J.D. and R.P., agents. T.M. attended the hearing on **her own behalf** ~~behalf of both Tenants~~. J.D., R.P., and T.M. provided affirmed testimony.

J.D. testified the Landlords' Application package was served on the Tenant by registered mail. In addition, the Landlords submitted an Amendment to an Application for Dispute Resolution, which was received at the Residential Tenancy Branch on July 10, 2018. According to J.D., it was served on the Tenant by registered mail. The Tenant acknowledged receipt of these documents.

The Tenant testified the **Tenant's** ~~Tenants'~~ Application package was served on the Landlords in person. J.D. acknowledged receipt.

No issues were raised during the hearing with respect to service or receipt of the above documents. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

R.M. was named as an applicant in the **Tenant's** ~~Tenants'~~ Application but was not named as a respondent in the Landlords' Application. The corporate Landlord was named as an Applicant in the Landlords' Application, but was not named as a respondent in the **Tenant's** ~~Tenants'~~ Application. Pursuant to section 64 of the *Act*, and with the agreement of the parties, I amend the applications to add R.M. and the corporate Landlord as parties to the dispute. The change has been reflected throughout this Decision.

Issues

1. Are the Landlords entitled to an order of possession?
2. Are the Landlords entitled to a monetary order for unpaid rent or utilities?
3. Are the Landlords entitled to recover the filing fee?
4. **Is the Tenant** ~~Are the Tenants~~ entitled to an order cancelling the notice to end tenancy for unpaid rent or utilities?
5. **Is the Tenant** ~~Are the Tenants~~ entitled to recover the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It indicated the tenancy began on September 1, 2014. Currently, rent in the amount of $1,384.00 per month

is due on the first day of each month. The parties disagreed about the amount of the security deposit held by the Landlord.

On behalf of the Landlords, J.D. testified the **Tenant** ~~Tenants~~ did not pay rent when due on May 1 and June 1, 2018. As the **Tenant** ~~Tenants~~ had a $24.00 credit from a previous overpayment, the amount outstanding at that time was $2,744.00. Accordingly, the Landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 6, 2018 (the "10 Day Notice"). The **Tenant's** ~~Tenants'~~ Application confirms receipt on the same date. A copy of the 10 Day Notice was submitted into evidence.

In addition, J.D. testified the **Tenant** ~~Tenants~~ did not pay rent when due on July 1 and August 1, 2018. Currently, rent in the amount of $5,512.00 is outstanding. J.D. testified further that the Landlords' procedures require it to provide tenants who pay rent in cash to be issued a receipt. A Tenant Leger for the period from January 1, 2017, to June 18, 2018, was submitted into evidence in support of the amount claimed.

In reply, T.M. testified that rent has been paid in full, and that payments were made in cash. T.M. acknowledged she did not submit documentary evidence in support of payment in cash – such as a bank statement – noting how busy she has been at work.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms that a tenant must pay rent when due under a tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. Further, section 46 of the *Act* permits a landlord to take steps to end a tenancy when rent remains unpaid on any day after the day it is due by issuing a notice to end tenancy for unpaid rent. A tenant has five days after receipt of a notice to end tenancy for unpaid rent to pay the overdue rent or dispute the notice by making an application for dispute resolution. Failure to pay the overdue rent or dispute the notice results in the conclusive presumption that the tenancy ends on the effective date of the notice.

In this case, J.D. testified that rent in the amount of $5,512.00 is currently outstanding. J.D.'s testimony was supported by a Tenant Leger and a copy of the 10 Day Notice. T.M. testified rent was paid in cash and is up-to-date, but did not offer documentary evidence in support. Accordingly, I find it is more likely than not that the **Tenant** ~~Tenants~~ did not pay rent when due on May 1, June 1, July 1, and August 1, 2018. Accordingly, the Landlords are entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

In addition, I find the Landlords have demonstrated an entitlement to a monetary award of $5,512.00 for unpaid rent. Having been successful, I also grant the Landlords a monetary

award in the amount of $100.00 in recovery of the filing fee. Therefore, pursuant to section 67 of the *Act*, I grant the Landlords a monetary order in the amount of $5,612.00.

The **Tenant's** ~~Tenants~~ Application is dismissed, without leave to reapply.

Conclusion

The Landlords are granted an order of possession, which will be effective two (2) days after service on the **Tenant** ~~Tenants~~. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlords are granted a monetary order in the amount of $5,612.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The **Tenant's** ~~Tenants'~~ Application is dismissed, without leave to reapply.

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: August 3, 2018

Corrected: August 31, 2018

Residential Tenancy Branch