



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

Dispute Codes OPRM-DR, FFL

Introduction

On June 11, 2018, the Landlord submitted an Application for Dispute Resolution by way of an *ex parte* Direct Request Proceeding under the *Residential Tenancy Act* (the “Act”). The Landlord requested an Order of Possession due to unpaid rent, a Monetary Order to recover the unpaid rent, and to be compensated for the cost of the filing fee. The Landlord’s evidence for the Direct Request was reviewed by an Adjudicator and resulted in an Order of Possession for the rental unit and a Monetary Order for unpaid rent as part of the Decision dated, June 20, 2018.

The Tenants received a copy of the Decision on August 17, 2018 and applied for a Review Consideration. The Tenants evidence for the Review Consideration was reviewed by an Arbitrator and in their subsequent Decision dated, August 23, 2018, the Arbitrator found that a new, participatory hearing should be held and that the Orders in relation to the Decision dated, June 20, 2018, be suspended until such time as they are confirmed, varied or set aside.

The parties attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written 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.

Issues to be Decided

Should the Landlord receive an Order of Possession for the rental unit, in accordance with Section 46 and 55 of the Act?

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with Section 67 of the Act?

Should the Landlord receive compensation for the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Landlord and the Tenants agreed on the following terms of the Tenancy Agreement:

The one-year, fixed term tenancy began on April 1, 2018. The monthly rent of \$5000.00 is due on the first of each month. The Landlord collected and still holds a \$2,500.00 security deposit and a \$2,500.00 pet damage deposit.

Landlord Evidence:

The Landlord testified that he did not receive the full rent for June 2018 and on June 2, 2018, he personally served a 10-Day Notice to End Tenancy for Unpaid Rent, dated June 2, 2018 (the "Notice"), to the Tenants. The Landlord claimed that there was an outstanding rent amount of \$2,800 for June 2018 and the Notice stated that the Tenants, within five days, could pay the rent, apply for dispute resolution or move out by June 13, 2018.

The Landlord stated that the Tenants paid \$2,200.00 of their June rent; however, failed to pay the balance. The Landlord referred to the text messages that he submitted as evidence that indicated a conversation between the Tenants and the Landlord where the Tenants acknowledged that they would pay the balance of the June rent on June 7, 2018. The Landlord stated that the Tenants did not pay the balance of the rent on June 7, 2018 and continued to negotiate partial payments of the outstanding \$2,800.00 throughout the next week; however, never did pay.

The Landlord acknowledged that they provided a receipt to the Tenants, dated June 1, 2018, that indicated, on the front of the receipt, that the Landlords had received full payment of the June 2018 rent; however, on the back of the receipt, the \$5000.00 was

scratched out as the Landlord had corrected it by handwriting “cash 2,200” to acknowledge that they only received \$2,200 cash towards the June 2018 rent. The Landlord explained that the receipts are preprinted, as they expect the rent to be paid in full, but that in this instance, the amendment to the receipt was made by hand-writing and correcting the amount received.

The Landlord stated that he received the full amount for July 2018 rent for use and occupancy only; received \$2900.00 towards August 2018 rent and did not receive any further rent payments for September or October 2018.

The Landlord is requesting an Order of Possession for the rental unit and a Monetary Order for a total of \$14,900.00 in unpaid rent based on the below:

| Item | Amount |
|----------------------------------|--------------------|
| Outstanding rent for June 2018 | \$2,800.00 |
| Outstanding rent for August 2018 | 2,100.00 |
| Unpaid rent for September 2018 | 5,000.00 |
| Unpaid rent for October 2018 | 5,000.00 |
| | |
| Total Monetary Claim | \$14,900.00 |

Tenants' Evidence:

The Tenants testified that they paid the rent for June 2018. The Tenants submitted the receipt, dated June 1, 2018, that they had received from the Landlord, that indicated the \$5,000.00 for June 2018 rent was paid. The Tenants did not acknowledge that the back of the receipt indicated that only \$2,200.00 in cash was paid. When questioned about the Landlord's testimony about the text messages that occurred throughout the month of June 2018 regarding the outstanding \$2,800.00, Tenant UV stated that he couldn't explain them. At the end of the hearing, the Tenants stated that the Landlord was probably right about the outstanding rent for June 2018. However, the Tenants stated that they attempted to pay for August 2018 and the following months, but the Landlord would not accept the rent.

The Tenant UV acknowledged that he didn't dispute the Notice as his wife was very sick. When they received the Order of Possession in August, he disputed that by applying for the Review Consideration.

The Tenant stated that, although they don't have the outstanding rent right now, that they would be able to pay the Landlord in two to three weeks.

Analysis

When considering the Landlord's Application, I acknowledge that there have been previous decisions made in regard to the issues in question. Given that this is the first participatory hearing where all of the parties had an opportunity to present their testimony and evidence, I set aside the previous Order of Possession and Monetary Order and base my Decision solely on the evidence presented at today's hearing.

I accept the undisputed testimony and evidence that the Tenants failed to pay their June 2018 rent in full, as identified as owing in the Notice, within five days of receiving the Notice. The Tenants did not make Application pursuant to Section 46(4) of the Act within five days of receiving the Notice. In accordance with Section 46(5) of the Act, the Tenants' failure to take either of these actions within five days led to the end of this tenancy on the effective date of the Notice. In this case, this required the Tenants to vacate the premises by June 13, 2018. As that has not occurred, I find that the Landlord is entitled to a two-day Order of Possession, in accordance with Section 55 of the Act.

I accept the undisputed evidence that the Tenants are in arrears for unpaid rent, contrary to Section 26 of the Act, and find that the Landlord has established a monetary claim for a total of \$14,900.00, in accordance with Section 67 of the Act.

The Landlord was successful with their Application and as such, is entitled to be reimbursed for the Filing Fee of \$100.00.

The Landlord has established a total monetary claim in the amount of \$15,000.00, which includes \$14,900.00 in unpaid rent and the \$100.00 in compensation for the filing fee for this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenants' security deposit and pet damage deposit, for a total of \$5,000.00, in partial satisfaction of the monetary claim.

Based on these determinations, I grant the Landlord a Monetary Order for the balance of \$10,000.00.

Conclusion

Pursuant to Section 55 of the Act, I am granting the Landlord an Order of Possession to be effective two days after notice is served on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the Landlord a Monetary Order for \$10,000.00 in accordance with Section 67 of the Act. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 11, 2018

Residential Tenancy Branch