



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPL, MNDL-S, MNRL-S, MNDCL, FFL

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlords requesting an Order of Possession due to unpaid rent; in alternative, the Landlords request an Order of Possession under a Two Month Notice to Terminate the tenancy for landlord’s use of property. The Landlords also request an order for payment of the filing fee and a monetary order for rent arrears, damages and other compensation in the sum of \$9,100.00. The Landlords ask to retain the security deposit in partial satisfaction of the monetary award.

The Landlords filed an amendment to their Application on October 2, 2018 indicating that the rent was paid for June 2018, but not for October 2018, and that they are also claiming rent revenue losses of \$2,200.00 for November, 2018. The total monetary claim was amended to \$11,300.00 and this amendment was delivered to the Tenants. This decision reflects that amendment.

The Landlord stated that although only one Tenant was listed on the agreement, both were living in the rental unit from the outset and this was not disputed. As both Tenants appeared to dispute the claim and there was no objection to this issue, I proceeded to conduct the hearing as against both Tenants as named herein.

The Landlords and Tenants appeared for the scheduled hearing. Neither party raised a concern about the service of the Notice of Hearing or evidence that was submitted by the parties.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, call witnesses and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issues to be Decided

Are the Landlords entitled to an Order of Possession, pursuant to sections 46, 49 and 55 of the Residential Tenancy Act ("Act")?

Are the Landlords entitled to a monetary order for rent arrears, compensation and damages pursuant to section 67 of the Act?

Are the Landlords entitled to retain the security deposit, pursuant to section 38 of the Act?

Are the Landlords entitled to payment of the filing fee, pursuant to section 72 of the Act?

Background and Evidence

This tenancy began on July 1, 2014 as a fixed term tenancy to June 30, 2015, which then converted to a month-to-month tenancy. Rent was set at \$1,900.00 payable on the 1st of each month and a \$950.00 security deposit was paid. A copy of the signed tenancy agreement was submitted into evidence.

The Landlords explained that the Tenants had been looking for a place to rent for their business operations and that the Landlords and Tenants finally agreed that the business could be operated as a home-based business and monthly rent was adjusted to \$2,200.00 by way of agreement between the parties as of November 16, 2016; this was not disputed.

The Landlords served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property on June 19, 2018 by registered mail, with an effective date of August 31, 2018; the reason given was that the Landlords or their immediate family intend to reside in the rental unit.

The Landlord states that they attempted to live in an apartment but found that it was not suitable and they would like to live back in the home as soon as possible. The Landlord also explained that they had approached the Tenants several months earlier to explain their intention to move back in, and that they gave the Tenants time for the school year to end before serving formal notice.

The Landlords served the Tenants with a 10-Day Notice to End Tenancy for Unpaid Rent on July 12, 2018 by posting it on the Tenants' door; it was for \$2,200.00 in rent owing from June 1, 2018 and had a stated effective date of July 25, 2018. The Landlord states that the rent arrears for June were eventually paid October 1, 2018.

The Landlords are claiming rent arrears of \$2,200.00 for each of July, August, September and October 2018. The Landlords are also claiming \$2,200.00 in anticipated rent revenue losses for the month of November and a "wildlife violation" of \$300.00.

The Landlord explained that the city has a bylaw requiring residents to wait until 7 a.m. on garbage pickup day to place bins curbside; the bin was placed out too early by the Tenants, and a bear got into the garbage which was left strewn about; photographs were submitted into evidence. The Landlords were fined \$500.00 as the homeowners; they say that the Tenants agreed to pay them back but that only \$200.00 was received. The Landlords are claiming the balance of \$300.00.

The Tenants did not file any dispute for either Notice to End Tenancy. They do not dispute the money that is owing for the rent arrears and plan to pay back the Landlords as soon as some issues are settled with respect to a fraud matter concerning their business. They state that they are clean tenants, and that the garbage bin was rolled down the very steep driveway ahead of schedule because the Tenant needed to leave for work and the wife was unable to manage the bin down the steep driveway herself.

The Tenants ask for more time to pay off the rent arrears and to find a new place to live. They have a child attending school in the area and have found it challenging to find a new place as the rental market is very competitive and they are competing with up to 20 families when viewing rental properties. The Tenants state that they have no family in the area and are doing everything they can to secure a new place as soon as possible but ask to have time until spring to relocate.

Analysis

Under section 46 of the Act, a tenant has 5 days from date of being served with a 10-Day Notice to End Tenancy for Unpaid Rent to file a dispute application or pay the rent arrears; if neither is done, the tenant is conclusively presumed to have accepted the notice to end the tenancy:

46 (1) *A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*

(2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*

(4) Within 5 days after receiving a notice *under this section, the tenant may*
(a) *pay the overdue rent, in which case the notice has no effect, or*
(b) *dispute the notice by making an application for dispute resolution.*

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date. [bolding added]

The Tenants have failed to file a dispute or pay the rent arrears within 5 days and therefore I find that the Tenants are conclusively presumed to have accepted the notice, with its effective date of July 25, 2018.

I have reviewed the notice and find that it meets the requirements of section 52, which requires that it be in writing and:

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,

....

(e) when given by a landlord, be in the approved form.

Accordingly, I am granting the Order of Possession in favour of the Landlords.

As the tenancy is terminated, there is no need for me to consider the Two Month Notice to End Tenancy.

Under section 7 of the Act, a party who fails to comply with the Act, regulation, or tenancy agreement must compensate the other party for damage or loss that results. To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. that a damage or loss exists;
2. that the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. the value of the damage or loss; **and**
4. steps taken, if any, to mitigate the damage or loss

The Applicant bears the burden of proving their claim, on a balance of probabilities.

The amount of the rent arrears for July, August, September and October are **\$8,800.00** and the Tenants admit that this amount is owing. The Landlords are granted a monetary award for this amount.

As the November rent is not in arrears and the Landlords have a duty to mitigate their losses, I am not prepared to consider the claim for rent revenue losses for the upcoming month and I am dismissing it in any event, the property will be vacant and the Landlords intend to reside there, resulting in no loss of rental income for that month.

I further find that the Tenants are liable for the \$500.00 fine incurred by the Landlords as homeowners for the garbage bin being placed curbside ahead of the schedule mandated. Accordingly, the Landlords are entitled to an order for payment of the remaining **\$300.00** owing by the Tenants as reimbursement for this fine.

As the Landlord was successful in this application for possession, I am also prepared to award the filing fee of **\$100.00**. The final monetary award is for \$9,200.00. The Landlords have asked to retain the \$950.00 security deposit in partial satisfaction and I grant that request. The final calculation is as follows:

Item	Amount
Rent Arrears	\$8,800.00
Wildlife Fine	300.00
Less: security deposit	(950.00)
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$8,250.00

I grant the Landlords a monetary order in the amount of \$8,250.00. This order must be served on the Tenants and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenants fail to make payment. Copies of this order are attached to the Landlords' copy of this Decision.

Conclusion

I grant an Order of Possession to the Landlords effective **two days after service of this Order** 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 further grant an Order for payment of \$8,250.00 to the Landlords by the Tenants forthwith.

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 22, 2018

Residential Tenancy Branch