



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPR, 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;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant 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 tenant confirmed that he was handed the 10 Day Notice by the landlords on November 5, 2018, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the tenant confirmed that in mid-November 2018, he received a copy of the landlords' dispute resolution hearing package sent by the landlords by registered mail on or about November 13, 2018, I find that the tenant was duly served with this package in accordance with section 89 of the *Act*. Since the tenant confirmed that they had received a copy of the landlords' written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*. The tenant did not provide any written evidence for this hearing.

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 and losses arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The parties agreed that this fixed term tenancy began on or about the spring of 2015. When the fixed term expired, the tenancy continued as a month-to-month tenancy. Monthly rent was initially set at \$750.00, and is now \$775.00, payable in advance on the first of each month. The landlords continue to hold the tenant's \$375.00 security deposit and \$100.00 pet damage deposit for this tenancy.

The tenant testified that the landlords also handed him a 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) on October 5, 2018. Landlord PS (the landlord) said that his happened on October 15, 2018. The landlord gave undisputed sworn testimony that the reason for the 2 Month Notice was to enable him to move into the rental unit after he renovates it.

The landlords' 10 Day Notice entered into written evidence by the landlords maintained that \$375.00 in rent was owing as of October 15, 2018. The tenant said that he offered to pay this amount, but the landlords never came to pick up this rent. The landlord testified that the tenant requested permission to refrain from paying rent for November 2018, as the month that he would not have to pay rent as a result of having received the 2 Month Notice. The tenant said that he had suggested November as the month when he could stay in the rental unit rent-free. The tenant confirmed that he did not apply to cancel either the 10 Day Notice or the 2 Month Notice. The landlord said that a total of \$1,975.00 in rent remained owing as of the date of this hearing, although clearly \$775.00 of that amount resulted from the landlords' issuance of the 2 Month Notice.

Analysis

Section 46 (4) (b) of the *Act* provides that upon receipt of a 10 Day Notice to end tenancy the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch or pay the amount then owing in

full. As the tenant failed to file an application for dispute resolution within the five days of service granted under section 46 (4) of the *Act*, the tenant is conclusively presumed under section 46 (5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, being November 15, 2018.

Similarly, there is undisputed sworn testimony that the tenant has not made application pursuant to section 49(8) of the *Act* within fifteen days of receiving the 2 Month Notice. In accordance with section 49(9) of the *Act*, the tenant's failure to take this action within fifteen days led to the end of this tenancy on December 31, 2018, the effective date identified on the landlords' 2 Month Notice.

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. As there were two notices to end this tenancy issued within a short period of time, with different requirements, during the hearing, I described the statutory provisions affecting the landlord's notices. The parties engaged in a conversation, turned their minds to compromise and a resolution of their dispute was achieved.

Both parties agreed to the following final and binding resolution of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on December 31, 2017, by which time the tenant will have surrendered vacant possession of the rental unit to the landlords, and that they did so on the basis of the landlords' 2 Month Notice, the first of the Notices to End Tenancy issued to the tenant.
2. The landlords agreed that in the event that the tenant vacates the rental unit by 1:00 p.m. on December 31, 2018, as outlined above, that no rent is owing for this tenancy.
3. The parties agreed that the usual provisions relating to the security and pet damage deposits remain in effect for this tenancy.
4. Both parties agreed that this settlement agreement constituted a final and binding resolution of the landlords' applications for an end to this tenancy and for all rent-related monetary issues and that they did so of their own free will and without any element of force or coercion.

Conclusion

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 if the tenant does not vacate the rental premises in accordance with their agreement. The landlords are provided with these Orders in the above terms and the tenant must be served with an Order in the event that the tenant does not vacate the premises by 1:00 p.m. on December 31, 2018, as set out in their agreement. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This tenancy ends on the basis of the 2 Month Notice issued in October 2018.

The landlords are not entitled to any monetary award for unpaid rent arising out of this application. In the event that the tenant does not abide by the terms of this settlement agreement, the landlords are at liberty to apply for a monetary award for unpaid rent owing at that time.

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: December 10, 2018

Residential Tenancy Branch