



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL-4M, MNRL, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on May 6, 2019, wherein the Landlord sought an Order of Possession based on a 4 Month Notice to End Tenancy for Landlord's Use issued on December 14, 2018 (the "Notice"), monetary compensation for unpaid rent as well as recovery of the filing fee.

The hearing was scheduled for teleconference at 9:30 a.m. on June 14, 2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

The Parties also confirmed that the Tenants had vacated the rental unit as of June 1, 2019 such that the Landlord's request for an Order of Possession was no longer required.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants for unpaid rent?
2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that this tenancy began May 5, 2016 and that the Tenants paid monthly rent of \$5,200.00.

The Landlord issued the Notice on December 14, 2018. The Notice indicates that it was posted to the rental unit door on December 14, 2018. The Landlord confirmed this during her testimony.

The Landlord confirmed that the Tenants did not apply to dispute the Notice. The effective date of the Notice was noted as April 14, 2019.

The Landlord stated that the Tenants moved out of the rental property on June 1, 2019.

The Landlord filed an Amendment in which she indicated she was seeking monetary compensation in the amount of \$12,200.00. During the hearing the Landlord confirmed that she wished to withdraw \$7,000.00 from the amount claimed such that she was only seeking monetary compensation in the amount of \$5,200.00 as compensation for the unpaid rent for April 2019 as well as rent for the day of June 1, 2019.

In response to the Landlord's submissions, the Tenant X.X. testified as follows. He stated that they paid the April rent on April 30, 2019. He further stated that the Landlord refused the payment. He confirmed the Tenants were agreeable to paying the April 2019 rent. X.X. also testified that they had an agreement with the Landlord that they were to move from the rental unit on May 31, 2019 and then the Landlord changed her mind.

The Tenant Y.Z. confirmed that they moved from the rental unit on May 31, 2019, but did not finish cleaning until June 1, 2019.

Analysis

After consideration of the testimony and evidence before me and on a balance of probabilities I find as follows.

I accept the Landlord's evidence that rent for the month of April 2019 remains outstanding. The Tenants did not dispute this, only to say that they tried to pay the rent and the Landlord refused.

The Landlord issued the Notice pursuant to section 49 of the *Act* such that the Tenants were entitled to a free months' rent pursuant to section 51 of the *Act*. The evidence indicates that at the time the April rent was due the Tenants had not received their free month's rent.

While a Landlord may be concerned about reinstating a tenancy by accepting payment from a tenant after a notice to end tenancy has been issued, the preferred course is to accept payment and issue a rent receipt for "use and occupation only". In this case I am satisfied the Landlord was not clear on her obligations and likely refused the April rent as she wished to provide the Tenants with their free month.

The Tenants disputed the Landlord's request for recovery of the filing fee. The Tenants allege that the Landlord agreed they could move from the rental unit on May 31, 2019 and then changed her mind. In support they provided an audio recording of a discussion with the Landlord. That recording was not in English and therefore I could not understand what was being said. In any event the Tenants confirmed that they moved from the rental unit on May 31, 2019 but did not complete cleaning until June 1, 2019. Further, this agreement was not reduced to writing, and was disputed by the Landlord.

At the time the Landlord filed for dispute resolution the parties did not have a written agreement to end the tenancy, nor did they have a formal "Mutual Agreement to End the Tenancy". As such, I find the Landlord's Application for an Order of Possession was necessary. I therefore award her the \$100.00 filing fee.

I dismiss the Landlord's request for rent for June 1, 2019. I accept the Tenants' evidence that they had moved from the rental unit on May 31, 2019 and simply returned

to finish cleaning. As the reason the tenancy ended was the Landlords' desire to demolish the rental unit, I find she did not suffer a financial loss of rent for June 1, 2019 as she had no intention to re-rent the unit.

Conclusion

The Landlord is granted monetary compensation in the amount of \$5,300.00 representing unpaid rent in the amount of \$5,200.00 and recovery of the filing fee. In furtherance of this I grant the Landlord a Monetary Order in the amount of \$5,300.00. Should the Tenants not pay as ordered the Landlord must serve the Order on the Tenants and may file and enforce it in the B.C. Provincial Court (Small Claims Division)

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: June 14, 2019

Residential Tenancy Branch