



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, MNDL, MNRL, OLC, OPC

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords' original application of May 24, 2019 identifying Tenant JO and TO, the signatories to the this fixed term tenancy agreement, was for:

- the issuance of an Order of Possession based on the Mutual Agreement to End Tenancy signed by Landlord TG and Tenant JO, pursuant to sections 44(1)(c) and 55 of the *Act*.

On June 14, 2019, the landlords submitted an amended application, in which they attempted to add claims for the following items to their original application, including a monetary claim for \$7,040.14:

- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for damage and losses arising out of this tenancy pursuant to section 67; and
- the issuance of an Order of Possession for cause based on the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 55 of the *Act*.

Tenant TO completed an application pursuant to the *Act* in which all four applicants outlined above were applicants for the following:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Their application clearly identified their desire to have the Mutual Agreement to End Tenancy set aside, as Tenant TO had not signed that Agreement.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:29 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlords and I were the only ones who had called into this teleconference.

Landlord TG gave undisputed sworn testimony supported by written evidence, that Landlord TG and Tenant JO signed the Mutual Agreement to End Tenancy (the Mutual Agreement) on an approved Residential Tenancy Branch (RTB) form on May 14, 2019. According to the terms of this Mutual Agreement, this tenancy was to end on June 1, 2019, by which time the tenants were to have surrendered vacant possession of the rental unit to the landlords.

Landlord TG also testified that they attempted to hand the 1 Month Notice to Tenant JO on May 31, 2019, but when Tenant JO refused to accept this Notice, Landlord TG posted the notice on the door of the rental unit that day. Based on this undisputed sworn testimony and in accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 1 Month Notice on June 3, 2019, the third day after it's posting.

The landlords testified that they sent both tenants individual copies of the original application for dispute resolution and their written evidence with respect to that application by registered mail on May 31, 2019. They also testified that they sent both tenants individual copies of their amended application and the written evidence pertaining to their amended application by registered mail on June 17, 2019. They entered into written evidence copies of the Canada Post Tracking Numbers and Customer Receipts to confirm these registered mailings. Based on this undisputed sworn testimony and written evidence, I find that Tenants JO and TO were deemed served with these documents on the fifth day after their registered mailing in accordance with sections 88, 89 and 90 of the *Act*.

The landlords gave undisputed sworn testimony that they have not received any rent for this tenancy for June and July 2019. They requested the recovery of unpaid rent for these months at the hearing.

Preliminary Issues

As the tenants failed to attend this hearing, I dismiss their application without leave to reapply.

With respect to the landlords' amended application, I note that amendments to applications for dispute resolution are subject to the provisions of the Residential Tenancy Branch's (the RTB's) *Rules of Procedure*:

Rule 2.3 reads as follows:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Rule 4.1 reads in part as follows:

4.1 Amending an Application for Dispute Resolution

An applicant may amend a claim by:

- *• completing an Amendment to an Application for Dispute Resolution form; and*
- *• filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch directly or through a Service BC Office.*

An amendment may add to, alter or remove claims made in the original application.

As stated in Rule 2.3 [Related issues], unrelated claims contained in an application may be dismissed with or without leave to reapply...

Under these circumstances, I allow the landlords' amended application for a monetary award for unpaid rent for the months of June and July 2019. I do as the tenants were clearly aware that rent had not been paid for these months, and that monthly rent in the amount of \$1,950.00 per month became due on the first of each of these months. I therefore allow the landlords' amended application to include unpaid rent totalling \$3,900.00 for these two months.

At the hearing, the landlords testified that almost all of the items listed in the remainder of their application for a monetary of \$7,040.14 were for items that the landlords maintain have been damaged during the course of this tenancy and for which the

tenants are responsible. Repairs to these items have not been undertaken as yet as the landlords do not have possession of the rental unit, and the claims presented were based solely on quotes. While a few of the items, such as the recent purchase of a door, and user fees owed to the municipality may already have been incurred, I find that this list of monetary claims is for the most part premature, as little if any work has yet been undertaken. At any rate, the claim for damage is essentially a new claim unrelated to the original one. While the tenants knew that rent was due on the first of each month, they may very well have been unaware of the landlords' intention to claim for damage to the rental property when the original application was submitted. For these reasons, I dismiss those portions of the landlord's monetary claim that are separate from their claim for unpaid rent for June and July 2019. The landlords have leave to reapply for the portions of this amended claim that are not being considered as part of the current application. The landlords will then be in a position to submit a new claim once the landlords have possession of the rental unit and complete the work to repair any damage that may have occurred during this tenancy.

As the 1 Month Notice is also a separate issue that is unrelated to the original application, I also decline to consider the landlords' request to end this tenancy on the basis of the 1 Month Notice.

Issues(s) to be Decided

Should the Mutual Agreement to End Tenancy be cancelled? Is the landlord entitled to an Order of Possession based on the Mutual Agreement to End Tenancy? Is the landlord entitled to a monetary award for unpaid rent? Should any other orders be issued with respect to this tenancy?

Background and Evidence

On October 22, 2018, both tenants signed a fixed term Residential Tenancy Agreement (the Agreement) enabling them to reside in this rental unit from October 22, 2018 until September 1, 2019. Both landlords signed the Agreement on October 24, 2019. According to the terms of the Agreement, monthly rent is set at \$1,950.00, payable in advance on the first of each month, plus utilities. The landlords continue to hold the tenants' \$975.00 security deposit paid in October 2018.

When problems continued to arise during the course of this tenancy, the landlords notified Tenant JO that they were concerned about this tenancy. Tenant JO, who

maintained that he had periodically been residing in his car, agreed to sign the Mutual Agreement.

In their written evidence and their application for dispute resolution, Tenant TO maintained that she was not aware that Tenant JO had signed this Mutual Agreement with Landlord TG. Tenant TO asserted that the Mutual Agreement was invalid because she had not agreed to vacate the rental unit by June 1, 2019.

When the tenants did not move out of the rental unit by June 1, 2019, the landlords issued the 1 Month Notice.

Analysis

A tenancy agreement signed by multiple parties attaches joint rights and responsibilities to those parties signing such an agreement. Each party signing the Agreement becomes jointly and severally liable for the commitments made in the Agreement and can act independently and without the other co-signatories permission on behalf of the parties signing the agreement. In this case, both tenants committed to a fixed term Agreement, and could end that Agreement with one of the landlord's written authorization to do so.

In this case, it was not necessary for the landlords to obtain written authorization from both tenants to enter into the Mutual Agreement to End Tenancy. One tenant has the legal authority to end such a tenancy with one or both of the landlords' written permission to do so. As there is undisputed written evidence that Landlord JO signed the Mutual Agreement and that one of the landlords signed on behalf of the landlords, I find that the landlords have a valid Mutual Agreement to end this tenancy by June 1, 2019. Whether or not the other tenant, Tenant TO knew about this Mutual Agreement beforehand or agreed with its terms, the Mutual Agreement entitled the landlords to obtain vacant possession of this rental unit by June 1, 2019. As this has not happened, I find that the landlord's have a legal right to possession of this rental unit, and issue a 2 Day Order of Possession in the landlords' favour to give legal effect to that right.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the

agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.”

There is undisputed evidence that the tenants have not paid any rent for June and July 2019, the most recent months of their fixed term tenancy. As they are obligated to abide by the terms of their Agreement, and have overheld beyond the legal date when they could remain in occupation of this rental unit, I allow the landlord a monetary award of \$1,950.00 for each of June and July 2019.

Although the landlords' amended application does not seek to retain the tenants' security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlords are provided with a formal copy of an Order of Possession. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlords are provided with a monetary Order under the following terms, which allows the landlords to recover unpaid rent owing for June and July 2019, and to retain the tenants' security deposit:

Item	Amount
Unpaid June 2019 Rent	\$1,950.00
Unpaid July 2019 Rent	1,950.00
Less Security Deposit	-975.00
Total Monetary Order	\$2,925.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these

Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: July 11, 2019

Residential Tenancy Branch