Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASSOCIATED PROPERTY MANAGEMENT (2001) LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the Landlord: OPRM-DR, FFL
For the Tenant: CNR, LRE, PSF

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Landlord filed a claim for:

- an order of possession, further to having served the Tenants with a 10 Day Notice to End the tenancy for Unpaid rent of $942.06 ("10 Day Notice");
- recovery unpaid rent of $692.06; and
- recovery of their $100.00 Application filing fee.

The Tenant filed a claim:

- to cancel the 10 Day Notice;
- to suspend or restrict the Landlord's right to enter; and
- for an order for the Landlord to provide services or facilities required by the tenancy agreement or law.

The Tenant, J.K., her father, K.K., the Landlord, D.S., her son, D.S., and an agent for the Landlord, D.R., ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy

Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision. At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties and any orders sent to the appropriate Party.

I asked the Parties about the discrepancy between the Landlords' names on the tenancy agreement versus those on the 10 Day Notice and the Parties' applications. The Agent and the Landlord advised me that the property management company named in the 10 Day Notice and the Tenants' application represents the owners. Accordingly, I have amended the Respondent's name in the applications pursuant to section 64(3)(c) and Rule 4.2, to include the owners' names, to be consistent with the tenancy agreement.

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenants indicated various matters of dispute on their application, the most urgent of which is the application to set aside the 10 Day Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I, therefore, advised the Parties that I would not consider the Tenants' claims other than the application to cancel the 10 Day Notice. The Tenants' other claims are dismissed.

Early in the hearing, I asked the Parties about when and how they had each served their application and documentary evidence on the other Party. The Tenant said she had received the Landlords' documents via registered mail. However, the Agent said that while she had received the Tenants' original application package, she had not received the Tenants' amendment to their application. The Tenant confirmed that she amended their application, adding the claim to cancel the 10 Day Notice, but that she had not served this amendment on the Landlords. I address this matter later in the Decision.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?

- Are the Landlords entitled to an order of possession?
- Are the Landlords entitled to a monetary order, and if so, in what amount?
- Are the Landlords entitled to recovery of their application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began approximately fifteen years ago without a written tenancy agreement. However, the Parties agreed that they signed a written tenancy agreement that started on January 1, 2019, and that the current monthly rent is $1,004.00, plus $38.50 for water, due on the first day of each month. The Parties agreed that the Tenants paid the Landlords a security deposit of $350.00, and no pet damage deposit. The Parties agreed that the rental unit is one side of a duplex.

The Parties agreed that the Agent served the Tenants with the 10 Day Notice on August 23, 2019, by registered mail. The 10 Day Notice is signed, dated August 23, 2019, has the rental unit address and the ground for the notice being that the Tenants failed to pay $942.06 of rent owing to the Landlords on August 1, 2019.

The Parties agreed that the Tenants did not pay rent in full on August 1, 2019, when it was due. Rather, the Tenant, J.K., agreed that they paid the Landlord with two cheques in the amounts of $71.22 and 521.24 on August 6, 2019 and August 15, 2019, respectively, for a total of $592.46.

The Tenant said that there was an emergency situation in the adjacent unit in July 2019. She said there was flood, that water was coming in through the window, because an outdoor tap was broken, and flooding the whole downstairs. The Tenant said that they had to take out all the old carpeting, because of the flood. She said they could not reach the Agent, as it was a Sunday, and they did not think they were authorized to contact the property owners, since the Agent had been appointed. The Tenant said they had to deal with the situation, so it would not get worse. She said the Agent was scheduled to inspect the adjacent unit the next day, therefore, they could explain it to her at that point. The Tenant said that they replaced the flooring at their own cost, but deducted this amount from their August 2019 rent. She said the Agent told the other Tenant, P.K., that “it was okay to do what we did and to send in an invoice and take it off the rent.”

The Agent said that she was not aware of any flood, that she had not received any calls from the Tenants about this, and that the Tenants had put the flooring in without authorization.

The Landlord's son, D.S., said: "If the flood happened on a Sunday, you don't have half the flooring done on Monday already." He said that they would have had to mop up the water and have dryers in to dry it out. D.S. said even if this had happened, it would not have had time to dry, and install half of the flooring by the next day. He also said that the way the Tenant described the flood, it would have affected the drywall, too. He said: "You don't install flooring, if you have drywall affected."

The Tenant insisted that this is what happened. She said they used flooring her father had donated, and they deducted the cost of flooring they installed in the adjacent suite for $450.04.

The Tenants applied to dispute the 10 Day Notice on September 25, 2019; however, the evidence before me is that the Agent served the Tenants with the 10 Day Notice through registered mail on August 23, 2019. Section 90 of the Act states that a package sent via registered mail is deemed served on the recipients five days after it is sent. As such, I find that the Tenants were served with the 10 Day Notice on August 28, 2019.

The Landlords also applied for recovery of the rent they said the Tenants owed them, as of August 1, 2019. The Landlord submitted a ledger detailing the payment amounts made and owing by the Tenants from January 1, 2019 to October 1, 2019. The Agent explained that the Tenants paid insufficient rent in June 2019, as well, saying that they had been short by $492.02 that month. Therefore, the Agent noted that when the Tenants were short by $450.04 in August 2019, the total unpaid rent at that point grew to $942.06, which is the amount set out on the 10 Day Notice. She pointed out that the ledger also indicates that the Tenants were credited with a stove purchase for unit #2 in the amount of $250.00 on September 16, 2019. As a result, the amount owing by the Tenants on the ledger as of October 1, 2019, was $692.06.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 26 of the Act confirms that a tenant must pay rent when due under a tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

I find there is insufficient evidence before me that the Tenants had a right to deduct a

portion of the rent owing in August 2019. Further, I find that the Landlord's son's testimony raises questions in my mind about the reliability of the Tenant's version of events involving the flood. I find it more likely than not that the flood did not happen. I find the Tenants installed flooring, which the Tenant, J.K., said was donated by her father, and then charged the Landlords for this unauthorized work via an unauthorized reduction in their rent.

Section 46 of the Act states that after being served with a 10 Day Notice, a tenant has five days to pay their overdue rent or apply for dispute resolution to dispute the 10 Day Notice. Accordingly, as the Tenants were served with the 10 Day Notice on August 23, 2019, I find they had until September 2, 2019 to do one of these actions. However, the evidence before me is that they did neither within the 5 days; as such, according to section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and should have vacated the rental unit by that date.

Based on the evidence before me, I find that the 10 Day Notice is consistent with section 52 of the Act as to form and content, and I find that the Landlords are entitled to an Order of Possession for the rental unit, pursuant to section 55 of the Act.

Further, I find that the Landlords provided sufficient evidence to establish that the Tenants have outstanding rent owing to them of $692.06. Given the Landlords' success in their application, I also award them recovery of the $100.00 application filing fee for a total award of $792.06 against the Tenants.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security deposit of $350.00 in partial satisfaction of the Landlords' monetary claim. After setting off the security deposit from the award, I grant the Landlords a monetary order pursuant to section 67 of the Act for the balance owing by the Tenants to the Landlord in the amount of **$442.06**.

Conclusion

The Tenants' are unsuccessful, as they provided insufficient evidence to support their claims. The Tenants' application is dismissed wholly without leave to reapply.

The Landlords are successful in their application. The Landlords are granted an Order of Possession, which will be effective **two days** after **service on the Tenants**. The

Order of Possession may be filed in and enforced as an Order of the Supreme Court of British Columbia.

The Landlord is granted a Monetary Order in the amount of **$442.06**. This Order may be filed in and enforced as an Order of the Provincial Court of British Columbia (Small Claims).

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 06, 2019

Residential Tenancy Branch