



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL, OPR (April 7, 2020 Application)
OPR, FFL (April 8, 2020 Application)
CNR, OLC, LRE (Tenant's Application)

Introduction

This hearing convened as a result of three Applications which were joined to be heard together. The Landlord filed two Applications and the Tenants filed one.

In the Landlord's first Application, filed on April 7, 2020, the Landlord sought an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on March 26, 2020 (the "Notice") as well as recovery of the filing fee. In the Landlord's second Application, filed on April 8, 2020, the Landlord again sought an Order of Possession based on the Notice and recovery of the filing fee.

In the Tenants' Application for Dispute Resolution, filed on April 8, 2020, the Tenants sought to cancel the Notice, as well as an Order that the Landlord comply with the *Residential Tenancy Act* (the "Act"), the *Residential Tenancy Regulation* and/or the tenancy agreement as well as an Order restricting the Landlord's right to enter the rental unit.

Both parties called into the hearing. The Tenants were also assisted by M.B., a legal advocate. All in attendance 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 parties' respective submissions and or arguments are reproduced here; further, only the

evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Service of the Notice

The Landlord testified that he served the Notice on the Tenants by email on March 26, 2020. He also stated that he placed the Notice in the Tenants mailbox on the 27th. He stated that he has keys to their mailbox which he used to put the Notice in their mail.

The Notice was provided in evidence. On the document, the Landlord is asked to confirm how the Notice was served; in response the Landlord indicated it was served by email on March 26, 2020. The Landlord did not write that it was placed in the Tenants' mailbox as he claimed during the hearing before me.

The Tenant M.H. testified that she received the Notice from the Landlord by a WhatsApp message on March 27, 2020. She said that after receiving the message she called the Residential Tenancy Branch and was informed that was not proper service.

The Tenant further testified that she then received the Notice by mail on April 9, 2020. Upon receipt of the Notice by mail she texted the Landlord (a copy of which was provided in evidence). In that text the Tenant also wrote that she received the Notice by email; during the hearing she confirmed that the Notice was sent to her by WhatsApp.

The Landlord's response to the Tenant's text message of April 9, 2020 was also provided in evidence and confirmed that the Landlord responded to the Tenants' text message and asked for the Tenants' email address.

On balance, I find the Landlord served the Notice on the Tenants through WhatsApp on May 27, 2020. I accept the Tenant's testimony in this respect. I also note that as of April 9, 2020 the Landlord did not appear to have the Tenant's email address as he asked for it by text message.

In any case, at the time the Notice was served, email was not an accepted means of service. On May 30, 2020, the Executive Director of the Residential Tenancy Branch made a Director's Order in response to the COVID-19 pandemic and which permitted email service.

I do not accept the Landlord's testimony that he placed the Notice in the Tenants' mailbox on March 27, 2020. Had he done so, I find that he would have indicated this on the Notice.

I accept the Tenants' testimony that she received the Notice in her mailbox on April 9, 2020.

On March 18, 2020 the Provincial Government declared a state of emergency. On March 30, 2020, the Minister of Public Safety and Solicitor General enacted Ministerial Order. No. M089, the *Residential Tenancy (COVID-19) Order*, pursuant to the *Emergency Program Act*, R.S.B.C. 1996, c. 110. Pursuant to the *Residential Tenancy (COVID-19) Order*, a landlord may not give a notice to end tenancy for unpaid rent during the state of emergency. For greater clarity I reproduce the relevant section as follows:

Notices to end tenancy

- 3 (1) Despite sections 44 (1) (a) (ii) to (vi) and sections 46 to 49.1 of the Residential Tenancy Act or any other section of the Residential Tenancy Act, the Residential Tenancy Regulation or any term of a tenancy agreement, a landlord must not give a tenant a notice to end the tenancy during the period this order is in effect.

I accept the Tenant's testimony that she received the Notice on April 9, 2020 which is during the state of emergency; as such, the Notice is not valid. **The Landlord's request for an Order of Possession based on the Notice is therefore denied. The Tenants' request for an Order canceling the Notice is granted. The tenancy shall continue until ended in accordance with the Act.**

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should either party recover the filing fee?

Background and Evidence

The Landlord testified that this tenancy began on July 15, 2019. A copy of the residential tenancy agreement, signed July 25, 2019, was provided in evidence. The agreement provided that monthly rent is \$1,850.00 and is payable in advance of the month on the 25th of the month preceding the month for which the rent is payable.

The Landlord testified that the Tenants paid \$925.00 for a security deposit. Although the agreement indicates the Tenants paid a pet deposit of \$500.00 the Landlord stated that the Tenants refused to pay this sum.

The Landlord also testified that he sold the Tenants some furniture when they first moved in. The Landlord confirmed that he received the following funds from the Tenants:

- \$250.00 for a double bed;
- \$100.00 for a single bed;
- \$300.00 for a fob deposit;
- \$925.00 for the security deposit;
- \$610.00 in prorated rent from July 15, 2019 to July 25, 2019;
- \$400.00 the for move in and move out fee from the strata; and,
- \$1,850.00 for rent from July 25, 2019.

The total owed to the Landlord at the time they moved in was \$4,435.00. The Landlord stated that he also gave the Tenants a \$1,460.00 credit to paint the apartment such that he received \$2,975.00 from the Tenants by cheque.

The Landlord testified that the Tenants failed to pay the April rent on March 25, 2020 as required. He then issued the Notice on March 26, 2020.

The Landlord confirmed that he received \$1,000.00 from the B.C. Government towards the Tenants rent in three separate payments: \$200.00 on May 25; \$600.00 on May 26 and \$200.00 on May 27.

Th Landlord stated that on April 27, 2020 the Tenants paid \$1,850.00.

At the hearing before me the Landlord sought the sum of \$2,800.00 calculated as follows:

April rent	\$1,850.00
May rent	\$1,850.00
June rent	\$1,850.00
<i>Less funds received from provincial government</i>	<i>\$1,000.00</i>
<i>Less April 27, 2020 rent payment</i>	<i>\$1,850.00</i>
Amount owing as of May 28, 2020	\$2,700.00

In response to the Landlord's testimony the Tenant, M.H., testified as follows.

The Tenant stated that they came from England on June 25, 2019. The Tenant confirmed they moved in June 25, 2019 and paid \$1,850.00 for the June 25 – July 25 rental period.

The Tenant also stated that they paid \$250.00 for a double bed and \$100.00 for a single bed. The Tenants also paid \$300.00 for a fob deposit and \$925.00 for the security deposit. The Tenants say that the \$610.00 was not for rent, it was an amount the Landlord charged the Tenants to "hold the apartment". The Tenants also paid \$400.00 for move in and move out fee from the strata although they were not provided any documentation to support this amount and later found out that the amount is much less.

In support of this testimony the Tenant provided a handwritten document which detailed these payments including the \$610 "hold" charge and the \$400.00 for "strata move in move out". This handwritten document appears to have been sent from the Landlord to the Tenants on July 23, 2019.

The Tenant stated that at the last minute, the Landlord charged the Tenants a pet deposit in \$500.00. The Tenant claimed that their friend, R.T., paid the \$500.00 to the Landlord in cash. Confirmation of this payment is noted on the tenancy agreement.

The Tenant stated that they did not receive the Strata bylaws, nor did they receive anything to substantiate the \$400.00 move in and move out fee.

The Tenant's advocate submitted that the \$610.00 hold fee, and the \$400.00 move in and move out fee should be applied to the rent as those fees are not permitted under the *Act*.

In response the Landlord reiterated that the Tenant paid \$610.00 for rent and \$400.00 move in and move out fee. He confirmed he did not submit any documents to support this fee. The Landlord again denied receiving \$500.00 from the Tenants for a pet deposit.

Analysis

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

I find that the tenancy began June 25, 2019. I am persuaded by the testimony of the Tenant, as well as the residential tenancy agreement which indicates the tenancy began on this date.

I also find the Tenants paid a \$500.00 pet damage deposit such that the Landlord holds \$1,425.00 in deposits. Again, the Tenants testimony is consistent with the residential tenancy agreement which provides that the Tenants paid \$500.00 as a pet deposit. This page was initialled by both parties indicating the funds were received.

On balance, I find that the Landlord charged the Tenants a \$610.00 "hold fee" as well as \$400.00 for a move in and move out fee. I do not accept the Landlord's testimony that the \$610.00 was a prorated amount of rent.

I find the "hold fee" to be akin to an application fee which is prohibited by section 15 of the *Act* which reads as follows:

15 A landlord must not charge a person anything for

- (a) accepting an application for a tenancy,
- (b) processing the application,
- (c) investigating the applicant's suitability as a tenant, or
- (d) accepting the person as a tenant.

I therefore find the Tenants are to be credited the \$610.00 hold fee towards any rent outstanding.

I accept the Tenant's testimony that the Landlord did not provide them with the strata rules, nor did he provide any justification for his \$400.00 move in/move out fee. The residential tenancy agreement makes no mention of the strata rules or this fee. Further, the agreement specifically provides there is no addendum to the agreement.

While a landlord can charge a moving fee if the tenants moves between units in the building, this must be stated in the tenancy agreement. Further, the landlord can charge a move in fee if that is required by the strata bylaws. In this case, I am not satisfied the Landlord was entitled to charge the Tenants a \$200.00 move in and \$200.00 move out fee. There was no evidence the Tenants moved from one unit to another during their tenancy; further, there was no evidence this fee was charged by the strata. **I therefore find the Tenants are to be credited the \$400.00 "move in/move out fee" towards any outstanding rent.**

At the hearing before me the Landlord claimed the Tenants owed the sum of \$2,700.00 in outstanding rent including the June 2020 payment which was due on May 25, 2020. The Tenants did not dispute the Landlord's claim that they did not pay the June rent. As such, and for the purposes of this my Decision and related calculations, I find the June rent amount was outstanding at the time of the hearing. As I have credited the Tenants the sum of \$1,010.00, the Landlord is entitled to the balance of **\$1,690.00** for unpaid rent.

The Tenants sought an order restricting the Landlord's right to enter the rental unit. As discussed during the hearing, a Landlord's right to enter the rental unit pursuant to section 29 of the *Act* has been limited during the current State of Emergency. Currently, and to encourage physical distancing and to minimize the transmission of COVID-19, a landlord may not enter the rental unit without the consent of the tenant (even if proper notice has been served) unless there is a risk to personal property or life.

For greater clarity I reproduce the relevant portions of *Ministerial Order No. M089, Residential Tenancy (Covid-19), Order of the Minister of Public Safety and Solicitor General*, under the *Emergency Program Act*, which came into effect March 30, 2020, and reads in part as follows:

Landlord's right to enter rental unit – *Residential Tenancy Act*

- 8 (1) Despite section 29 (1) (b) of the *Residential Tenancy Act* and sections 11 (2) (a) and (3) of the Schedule to the *Residential Tenancy Regulation*, a landlord must not enter a rental unit that is subject to a tenancy agreement even if the landlord gave the tenant written notice in accordance with those sections that the landlord would be entering the rental unit.
- (2) If a landlord gave written notice under section 29 (1) (b) of the *Residential Tenancy Act* before the date of this order, and the date for entering the rental unit given in the notice increase is after the date of this order, that notice is null and void.
- (3) Despite any section of the *Residential Tenancy Act*, the *Residential Tenancy Regulation* or any term of a tenancy agreement that limits entry by a landlord into a rental unit that is subject to a tenancy agreement, a landlord may enter a rental unit that is subject to a tenancy agreement if the following applies:
- (a) an emergency in relation to the COVID-19 pandemic exists, and
 - (b) the entry is necessary to protect the health, safety or welfare of the landlord, a tenant, an occupant, a guest or the public.

I am not satisfied, based on the evidence before me, that any further restrictions need to be made in this respect.

As the parties have enjoyed divided success, I find they should each bear the cost of their own filing fees.

Conclusion

The Notice was served after March 30, 2019 and contrary to Ministerial Order. No. M089, the *Residential Tenancy (COVID-19) Order*. The Landlord's request for an Order of Possession based on the Notice is dismissed. The Tenant's request for an Order canceling the Notice is granted.

The Tenants are credited the \$610.00 "hold fee" and the \$400.00 move in and move out fee charged by the Landlord such that the Landlord is entitled to monetary compensation for unpaid rent in the amount of \$1,690.00. In furtherance of this the Landlord is granted a Monetary Order in the amount of **\$1,690.00**. This Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

The Tenants' request for an Order restricting the Landlord's right to enter the rental unit is granted to the extent the Landlords' rights in this regard are already limited by *Ministerial Order No. M089, Residential Tenancy (Covid-19), Order of the Minister of Public Safety and Solicitor General*, under the *Emergency Program Act*, which came into effect March 30, 2020.

Neither party is entitled to recover the filing fee.

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 1, 2020

Residential Tenancy Branch