



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPB, MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for an Order of Possession, a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

Legal Counsel for the Landlords stated that on June 26, 2020 the Dispute Resolution Package and the evidence the Landlords submitted to the Residential Tenancy Branch was personally served to the Tenant. The Tenant acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was sent to the Landlords, via registered mail, on July 13, 2020. Legal Counsel for the Landlords acknowledged the evidence was received and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant, with the exception of legal counsel and the observer, affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Issue(s) to be Decided

Are the Landlord entitled to compensation for unpaid rent/utilities and to keep all or part of the security deposit?

Are the Landlords entitled to an Order of Possession?

Background and Evidence

The Landlords and the Tenant agree that:

- The tenancy began on September 01, 2019;
- The parties signed a tenancy agreement;
- The tenancy agreement declared that the tenancy was for a fixed term, the fixed term of which ended on June 30, 2020;
- The tenancy agreement declared that the rental unit must be vacated at the end of the tenancy because it is the “end of the lease agreement”;
- When the parties discussed the tenancy, the Landlords explained that the rental unit needed to be vacated on June 30, 2020 because the Landlords would be using the unit for a family vacation;
- Monthly rent of \$1,900.00 was due by the first day of each month;
- The Tenant paid a security deposit of \$925.00; and
- The rental unit has not been vacated.

The female Landlord stated that they have been using the rental unit for family vacations since 1979.

The Tenant stated that she is currently unable to vacate the rental unit due to a low vacancy rate in the area and health concerns related to the COVID-19 pandemic.

The male Landlord disputes the Tenant’s submission that there is a low vacancy rate in the area.

The Landlords are seeking compensation for unpaid rent for any period the Tenant remains in the rental unit after June 30, 2020.

The Landlords are seeking compensation for unpaid utilities. The Landlords and the Tenant agree that:

- The Tenant was to pay for hydro, gas, and internet service during the tenancy;
- The Tenant has been provided with a hydro bill for the period between April 28, 2020 and June 28, 2020, in the amount of \$201.17, which has not yet been paid; and
- The Landlords have not provided the Tenant with an internet bill for the month of July of 2020.

The Landlords and the Tenant agree that the Tenant sent the Landlords an e-transfer of \$1,900.00 for rent for July of 2020. The female Landlord stated that this e-transfer has not been accepted by the Landlords. The Tenant stated that she believes the e-transfer was accepted, although she did not receive official notice of this from her financial institution.

Analysis

On the basis of the undisputed evidence, I find that the parties signed a fixed term tenancy agreement, the fixed term of which began on September 01, 2019 and ended on June 30, 2020, for which the Tenant paid a security deposit of \$925.00 and for which the Tenant agreed to pay monthly rent of \$1,900.00.

Section 55 (2)(c) of the *Residential Tenancy Act (Act)* authorizes a landlord to apply for an Order of Possession if the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97(2)(a.1) of the *Act*, requires the tenant to vacate the rental unit at the end of the term.

Section 97(2)(a.1) of the *Act* authorizes the Lieutenant Governor in Council to make regulations prescribing the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term.

Section 13.1(2) of the Residential Tenancy Regulation reads:

For the purposes of section 97 (2) (a.1) of the *Act* [*prescribing circumstances when landlord may include term requiring tenant to vacate*], the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term are that

- (a) the landlord is an individual, and
- (b) that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

On the basis of the undisputed evidence, I find that the tenancy agreement included a requirement that the Tenant vacate the rental unit at the end of the fixed term and that

both parties understood that the rental unit needed to be vacated on June 30, 2020 so the Landlords could use the unit for vacation purposes. I therefore find that the Landlords had the right to include a term in the tenancy agreement that required the tenant to vacate the rental unit on June 30, 2020, pursuant to section 13.1(2) of the Residential Tenancy Regulation.

As the Landlords had the right to include the term requiring the Tenant to vacate on June 30, 2020 and the Tenant agreed to that term, I find that the Tenant was obligated to vacate the rental unit on June 30, 2020. As the Tenant has not yet vacated the rental unit, I find that the Landlords are entitled to an Order of Possession, pursuant to section 55 (2)(c) of the *Act*.

In adjudicating this matter, I have placed no weight on the Tenant's submission that there is a low vacancy rate in the area and there are current health concerns related to the COVID-19 pandemic. I find that neither of these issues negate the Tenant's obligation to comply with the term of the tenancy agreement that required her to vacate on June 30, 2020.

As the Tenant did not vacate the rental unit at the end of the fixed term of the tenancy, as required by the tenancy agreement, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. I therefore find that the Tenant must pay rent to the Landlords for the 21 days in July of 2020 that she has remained in possession of the rental unit. At a daily rate of \$61.29, I find that the Tenant currently owes the Landlords \$1,287.09 for the 21 days she remained in possession of the rental unit.

I decline to award the Landlords compensation for any overholding rent that may become due after July 21, 2020, as it is entirely possible the Tenant may decide to vacate the rental unit on July 22, 2020.

As the Tenant agrees that she is required for hydro costs incurred during the tenancy and she agrees she has not yet paid the hydro bill for the period between April 28, 2020 and June 28, 2020, in the amount of \$201.17, I find that she must pay the Landlords \$201.17 for this expense.

As the Landlords have not yet provided the Tenant with an internet bill for the month of July of 2020, I find that the Tenant is not yet obligated to pay that bill. Once the bill is presented to the Tenant, the Tenant will be obligated to pay a pro-rated portion of the bill, the amount of which will be dependant on when she vacates the rental unit. In the

event the Tenant does not pay the amount due, the Landlords are at liberty to file another Application for Dispute Resolution seeking compensation for any unpaid utilities.

I find that the Landlords' Application for Dispute Resolution has merit and that the Landlords are entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

I grant the Landlords an Order of Possession that is effective **two days after it is served upon the Tenant** . This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$1,588.26, which includes \$1,488.26 in unpaid rent/utilities and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$925.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$663.26.

The Landlords are at liberty to accept the e-transfer of \$1,900.00 the Tenant sent for July rent; to deduct the \$663.26 currently owing, and then return the remaining \$1,236.74 to the Tenants. In the event the Landlords are unable or unwilling to accept the \$1,900.00 e-transfer and the Tenant does not voluntarily comply with this monetary Order, the Order may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order 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 *Act*.

Dated: July 21, 2020

Residential Tenancy Branch