



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, MNR-S, MNDC-S, MND-S, FF

Introduction

This hearing was convened as a result of the landlords' application for dispute resolution under the Residential Tenancy Act (Act). The landlords applied for:

- an order of possession of the rental unit based on a Mutual Agreement to End Tenancy,
- a monetary order for unpaid rent;
- compensation for a monetary loss or other money owed;
- compensation for alleged damage to the rental unit by the tenant;
- authority to keep the tenants' security deposit and pet damage deposit to use against a monetary award; and
- for recovery of the filing fee paid for this application.

The landlords attended the telephone conference call hearing; the tenants did not attend.

The landlord testified that they served each tenant with their Application for Dispute Resolution and Notice of Hearing by registered mail. The landlords provided the copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm this mailing. These numbers are located on the style of cause page in this Decision.

Based upon the submissions of the landlords, I accept the tenants were served notice of this hearing and the landlords' application as required by section 89(1) of the Act and the hearing proceeded in the tenants' absence.

The hearing process was explained to the landlords and they were given an opportunity to ask questions about the hearing process. Thereafter, the landlords were provided the

opportunity to present their affirmed testimony and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matters-

The landlords confirmed that the tenants have not yet vacated the rental unit. I informed the landlords that the major components of their monetary claim were premature and incomplete, as the claim included estimated costs for cleaning, damage, and carpet cleaning.

The landlords were informed that the tenants still had the opportunity to leave the rental unit reasonably clean and undamaged, less reasonable wear and tear.

I therefore have only proceeded on the landlords' request for the order of possession of the rental unit and their monetary claim for unpaid rent for July 2020, which was contained in their application.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit and to recovery of their filing fee paid for this application?

Background and Evidence

The written tenancy agreement filed by the landlords shows this tenancy began on April 1, 2020, that monthly rent was \$2,400, and the tenants paid a security deposit and a pet damage deposit of \$1,200 each (the deposits). The tenancy agreement was for a fixed term through June 30, 2020, and then the tenancy converted to a month-to-month tenancy.

The landlord also submitted a copy of a Mutual Agreement to End Tenancy document signed by the parties on June 25, 2020, in which the parties agreed in writing that the tenancy would end on July 31, 2020, at 1:00 p.m. The landlords testified they have applied for the order of possession of the rental unit in the event the tenants fail to vacate by the agreed upon date, July 31, 2020.

The landlord said that the tenants paid \$1,000 rent for July 2020, and owed a rent deficiency of \$1,400. The landlords submitted they wanted to retain this amount from the deposits.

Analysis

Based on the undisputed documentary evidence from the landlords and undisputed testimony provided by the landlords at the hearing, and on the balance of probabilities, I find the following.

Order of possession –

I find that pursuant to section 44(1)(c) of the Act the parties mutually agreed in writing to end the tenancy on July 31, 2020 at 1:00 p.m. This is supported by the Mutual Agreement submitted in evidence and the testimony before me.

At the landlords' request, I grant the landlords an order of possession pursuant to section 55(3) of the Act, effective **July 31, 2020 at 1:00 p.m.** in the event the tenants fail to vacate the rental unit by that time and date.

Monetary claim -

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

I find that the landlords submitted sufficient, unopposed evidence to prove that the tenants paid \$1,000 in July 2020 towards the monthly rent and owe the amount of unpaid rent of \$1,400 for July 2020, still due under the tenancy agreement. I find the landlords have established a monetary claim of \$1,400.

Filing fee –

I do not grant the landlords recovery of their filing fee in this case. At the time of their application filed on June 29, 2020, the tenants still had until July 31, 2020, to vacate the rental unit pursuant to the terms of their Mutual Agreement. Additionally, the tenants did not owe the monthly rent for July 2020 at that time.

Due to this, although I have now granted the landlords an order of possession in the event the tenants do not vacate and a monetary award for the rent deficiency of \$1,400, I find their application was pre-mature as they did not have to file their application at that time.

Conclusion

The landlords have been granted an order of possession effective July 31, 2020, at 1:00 p.m. This order must be served on the tenants to be enforceable and may be enforced in the Supreme Court of British Columbia, if the tenants do not voluntarily vacate. I find the tenancy ends on July 31, 2020, at 1:00 p.m.

The tenants are cautioned that the costs of such enforcement, such as bailiff and moving fees, are subject to recovery from the tenants.

The landlords have established a monetary claim of \$1,400. The landlords are authorized to deduct the amount of \$1,400 from the deposits.

The balance of the landlords' monetary claim contained in their application and not specifically dealt with here, is dismissed, with leave to reapply.

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 27, 2020

Residential Tenancy Branch