Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR-DR OPR-DR-PP FFL MNDCL CNR FFT

Introduction

The landlord seeks a monetary order for unpaid rent, pursuant to sections 26 and 67 of the *Residential Tenancy Act* (the "Act"). By way of cross-application the tenants had sought to cancel a notice to end tenancy pursuant to section 46 of the Act. Both parties have also made a claim for recovery for their application filing fee, under section 72 of the Act. It should be noted that, as the tenancy ended on or about July 3, 2021, the landlord no longer seeks an order of possession and the tenants' application to dispute the notice is moot.

Attending the hearing was the landlord, his legal counsel, and one of the tenants. No service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained.

Issue

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began January 1, 2018 and ended on or about July 3, 2021. The tenancy was, at the time it ended, a month-to-month tenancy. Monthly rent was $2,600.00, and it was due on the first day of the month. The tenants paid a security deposit in the amount of $1,300.00, which the landlord currently holds in trust pending the resolution of this dispute. A copy of a written tenancy agreement was submitted into evidence.

In respect of the landlord's application, the landlord seeks $6,800.00 in compensation for unpaid rent. This amount comprises rent for June and for July 2021, and two arrears payments of $800.00 each from a previous rent repayment plan.

Landlord's counsel referred to a written submission which outlined, in chronological order, the events before and after the tenancy. The contents of the submission will not be reproduced here except where necessary to make findings of fact and law. A few relevant excerpts, however, include the following, address how the tenancy came to an end:

> On or about June 23, 2021, the Tenants posted on Facebook that they were looking for a new home for one of their cats, because the cats were not getting along in their new home. The Landlord inferred from that that the Tenants had already moved out of the Property.
>
> On or about June 25, 2021, the Tenants advised the Landlord by email that they had found a new place to move to, and that they had made arrangements for a carpet cleaning company to attend the Property on July 1, 2021.
>
> [. . .]
>
> When the Landlord arrived at the Property [on July 2], he found that the house was unlocked, all the lights were on, the refrigerator was empty, the carpets had been cleaned, and the Tenants' furniture and belongings were gone.
>
> [. .]
>
> Because the Tenants had abandoned the Property, the Landlord changed the locks to the Property on or about July 3, 2021.

The landlord confirmed that counsel's submissions regarding the events were a true and accurate representation of those events. (As such, counsel's submissions will be accepted as the landlord's evidence in respect of his application.)

The tenant argued, at the start of the hearing, that they did not willingly leave the rental unit, and that they were illegally locked out. He confirmed that they were no longer tenants after July 3, 2021, and, that they currently reside elsewhere.

After counsel's submissions, the tenant submitted that he did not dispute the landlord's claim for rent for June or for the claim for the arrears. However, he stated that he did dispute the claim for July's rent because they were locked out of the rental unit without notice. Moreover, he argued that because of this lock-out they did not have possession of the rental unit.

The tenant argued that the landlord has provided no evidence of having mitigated his loss, and as such they ought not be responsible for rent for July. He added that the rental market in Kelowna "is insane" and that a landlord does not have to have a posting up on the internet for very long before there are a plentiful number of potential applicant tenants. It should be noted that the tenant did not dispute, during the hearing, any of the description of the chain of events leading to the end of the tenancy as described in the landlord's written submission. Other than, of course, the circumstances of whether the changing of the locks was legal or not.

In rebuttal, landlord's counsel argued that the landlord did not fail to mitigate their loss, as only a little bit of work was needed to make the rental unit re-rentable. Moreover, it only took the landlord a little less than two months to secure a new tenant, who, it would appear, will take occupancy in September.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

As noted above, the tenants do not dispute the landlord's claim for rent for June 2021 and for the arrears. As such, I shall only address the claim for rent for July 2021.

First, section 45(1) of the Act must be applied. This is the section of the Act which sets out how a tenant may end a periodic (that is, a month-to-month) tenancy:

> A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
> (a) is not earlier than one month after the date the landlord receives the notice, and
> (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this dispute, the tenants never appeared to have provided formal notice to the landlord that they intended to end the tenancy. However, based on the email dated on or about June 25 wherein the tenants advised the landlord that they had found a new place, that they had made arrangements for a carpet cleaning company to attend the rental unit on July 1, 2021, and, that the landlord found the rental unit to be basically devoid of the tenants' property on July 3, it is a reasonable inference that the tenants ended the tenancy on July 3, 2021.

Last, I am not persuaded by the tenant's argument that the tenants were not liable for a loss of rent for July because they were locked out of the rental unit. By all accounts, the tenants' furniture and belongings were all removed by July 3, and I find it difficult to accept that the tenants somehow expected to have exclusive possession of the rental unit after July 3. Especially given that they never paid any rent for that month.

Given the above, while the tenants did not end the tenancy in compliance with the Act, it is my finding of fact that the tenancy ended when the tenants vacated the rental on or just prior to July 3, 2021. This finding is made on applying section 44(1)(d) of the Act, which states that a tenancy ends when "the tenant vacates or abandons the rental unit."

In any event, that the tenants gave the landlord a mere five days' notice that they intended to vacate on or just after July 1, it is wholly unreasonable to expect the landlord to mitigate their loss by finding a new tenant in such a short amount of time. Indeed, an underlying purpose for a tenant's having to give their landlord a month's notice is so that a landlord may be afforded a reasonable amount of time to advertise the property, conduct showings, vet applications, and secure a new tenant.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving his claim for a loss of rent for July 2021.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded in their application, I grant them $100.00 in compensation to cover the cost of the filing fee. The tenants' claim for recovery of their application filing fee is dismissed.

The landlord is awarded a total of $6,900.00 for unpaid rent, loss of rent, rent arrears, and for the cost of the application filing fee.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As such, I order that the landlord may retain the tenants' security deposit of $1,300.00 in partial satisfaction of the above-noted award. The balance of the award, $5,600.00, is granted by way of a monetary order issued to the landlord in conjunction with this decision.

Conclusion

I HEREBY

1. dismiss the tenants' application, without leave to reapply;

2. grant the landlords' application;

3. authorize and order the landlord to retain the tenants' security deposit in the amount of $1,300.00; and,

4. grant the landlord a monetary order in the amount of $5,600.00. A copy of this order must be served on the tenants, and if the tenants fail to pay the landlord the amount owed then the landlord may file and enforce this order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: August 24, 2021

Residential Tenancy Branch