



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, RR, CNR, LAT, PSF, OLC, AS, RP,
OPR, MNRL-S, MNDCL-S, and FFL

Introduction

The tenants sought various relief under the *Residential Tenancy Act* (“Act”). By way of cross-application the landlord sought an order of possession and a monetary order for unpaid rent.

The tenant FK, the landlord, the landlord’s wife, and a process server for the landlord, attended the hearing on February 22, 2022 at 9:30 AM. The hearing ended at 9:57 PM.

No service issues were raised, and the parties (FK and CP) were affirmed.

Preliminary Issue: Previous Decision and Orders

It should be noted that a hearing in respect of the landlord’s application for an order ending the tenancy under section 56 of the Act occurred on February 1, 2022. A decision (by a different arbitrator) and an order of possession in respect of that application were issued on February 1. Based on that decision the tenancy in this matter ended on February 1, 2022. (See Section 56 File No. referenced on the cover page of this decision.) As explained to the tenant, any issues (service of evidence, access to the mailbox, or otherwise) arising from the February 1, 2022 decision and orders are outside of my authority or jurisdiction. The tenants’ right to appeal the February 1 decision and orders is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Given the above, the issues in the tenants’ application in this matter are now moot, given that the tenancy has ended. The tenants’ application is dismissed without leave to reapply. The only remaining issue is whether the landlord is entitled to a monetary order for unpaid rent.

Issue

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

Background and Evidence

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

The tenancy began sometime in May of 2021. The landlord took over the property in August of that year. The landlord testified that monthly rent is \$1,600.00 and he holds a security deposit of \$275.00 from tenant FK and a security deposit of \$275.00 from tenant DT. (These amounts differ from the security deposit amount of \$800.00 which is indicated on the landlord's application.

The landlord testified that he told the tenants that if they wanted to continue staying in the rental unit that they had to pay him a total of \$1,600.00. He gave them a new written tenancy agreement (with an effective start date of October 1, 2021 and rent of \$1,600.00). The tenants refused to sign the agreement.

The tenant testified that monthly rent is, and always was, \$550.00. He testified that the landlord attempted to pressure them into agreeing to an increase to \$800.00 per tenant, to which the tenants refused. The tenant kept paying the landlord the rent in cash, though the landlord allegedly failed to provide any receipts. After the landlord refused to issue receipts for cash payments, the tenant stopped paying rent beyond November.

Analysis

Rent must be paid when it is due under a tenancy agreement ([section 26\(1\)](#) of the Act). A landlord may issue a notice to end the tenancy under [section 46](#) of the Act if a tenant does not pay rent on time and in full.

If a tenant does not pay the amount of rent owing, or if they do not dispute the notice within 5 days, they are presumed to have accepted the notice and must vacate by the effective end of tenancy date indicated on the notice (section 46(5) of the Act).

In this dispute, the landlord claims that rent is \$1,600.00. This is the amount that the landlord has entered into the unsigned tenancy agreement. It is the amount that the landlord told the tenants they would have to pay if they wanted to continue living in the rental unit after August 2021. Conversely, the tenant testified that monthly rent was \$575.00 and that he never agreed to paying more than this amount.

There is, it should be noted, no documentary evidence of the landlord and the tenants agreeing that monthly rent was, or is, \$1,600.00. It is also rather perplexing that the landlord's application indicates there is a security deposit of \$800.00 when he testified during the hearing that the total security deposit is \$550.00 (\$275.00 for each tenant).

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlord has failed to establish that monthly rent is \$1,600.00. As such, it is my finding that the legal amount of the monthly rent is \$550.00 per tenant.

The tenant admitted that he stopped paying his portion of the rent after November 2021. The unpaid rent of \$550.00 (for FK) from December 2021 to February 28, 2022 is in the amount of \$1,650.00. (The rent is calculated to include the days remaining in this month, based on the fact that the landlord appears not to have taken steps to enforce the order of possession of February 1, 2022.)

Based on the lack of any documentary evidence submitted by the landlord in respect of tenant DT's unpaid rent portion, this aspect or portion of the landlord's application is dismissed *with* leave to reapply.

As the landlord is successful in respect of seeking compensation for tenant FK's portion of unpaid rent, it is my finding that the landlord is entitled to recover the cost of the application filing fee of \$100.00 pursuant to section 72 of the Act.

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." Based on the landlord's testimony that the security deposit was \$275.00 per tenant (and taking into account that the tenant did not dispute this specific aspect of the landlord's testimony), the landlord is hereby authorized to retain tenant FK's \$275.00 security deposit in partial satisfaction of the total award of \$1,750.00.

A monetary order in the amount of \$1,475 ($\$1,650.00 + \$100.00 - \$275.00 = \$1,475.00$) is issued in conjunction with this decision to the landlord. If tenant FK fails to pay the landlord this amount within 15 days of receiving a copy of this decision or the monetary order (whichever is received earlier) then the landlord may enforce the monetary order in the Provincial Court of British Columbia.

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlord's application is granted, in part.

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

Dated: February 22, 2022

Residential Tenancy Branch