



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR-DR, MNR-DR, CNC, CNR, OLC, FFT, FFL

Introduction

This hearing was convened in response to cross applications.

The Tenants filed an Application for Dispute Resolution in which they applied to cancel a One Month Notice to End Tenancy for Cause.

The female Tenant stated that in March of 2023, the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on March 06, 2023 was sent to the Landlord, via registered mail. The Landlord acknowledged receiving these documents and they were accepted as evidence for these proceedings.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on March 24, 2023 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in March was sent to each Tenant, via registered mail. Both Tenants acknowledged receipt of these documents and this evidence was accepted as evidence for these proceedings.

On April 15, 2023 and May 15, 2023, the Landlord submitted additional evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was sent to the female Tenant, via registered mail, on May 15, 2023. The female Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The Landlord stated that she did not serve the male Tenant with copies of the evidence she submitted to the Residential Tenancy Branch on April 15, 2023 and May 15, 2023, as she did not know that was necessary. Upon being advised that this evidence could not be accepted as it was not served to the male Tenant, the Landlord stated that she would like to amend the Application for Dispute Resolution to remove the male Tenant as a Respondent.

I find it reasonable to amend the Landlord's Application for Dispute Resolution by removing the male Tenant as a Respondent. As such, any Order granted to the Landlord will not name the male Tenant. As the male Tenant is no longer a party to these proceedings, I am able to consider evidence that was not served to him.

On March 06, 2023 the Tenants submitted an amendment to their Application for Dispute Resolution, in which they applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. At the hearing the female Tenant stated that the rental unit has been vacated and the Tenants would like to withdraw the application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. As the application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has been withdrawn, I do not need to determine whether this amendment was properly served to the Landlord.

At the hearing the Landlord withdrew the application for an Order of Possession and the Tenant withdrew the application to cancel the One Month Notice to End Tenancy for Cause, as the unit has been vacated. I find it reasonable to amend the Applications for Dispute Resolution accordingly, given that the unit has been vacated.

On April 04, 2023 the Tenants submitted an amendment to their Application for Dispute Resolution, in which they applied for the return of their security deposit. The Tenant stated that this amendment was not served to the Landlord. With the consent of both parties, I will determine whether the security deposit should be retained by the Landlord or returned to the Tenants.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent/lost revenue?
Should the security deposit be returned to the Tenants or retained by the Landlord?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on February 01, 2022;
- monthly rent of \$1,600.00 was due by the first day of each month;
- on January 14, 2022, a security deposit of \$800.00 was paid;
- the rent that was due on March 01, 2023 has not yet been paid;
- on March 02, 2023 the Landlord personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which declared that the unit must be vacated by March 12, 2023;
- on February 24, 2023 the Landlord personally served the Tenant with a One Month Notice to End Tenancy for Cause, which declared that the unit must be vacated by March 31, 2023; and
- the rental unit was vacated on March 19, 2023.

The Landlord is seeking compensation for lost revenue from April of 2023. She stated that she was not able to advertise the unit in a timely manner because the Tenant did not vacate the rental unit on March 12, 2023, as required by the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities; the Tenant had disputed the One Month Notice to End Tenancy for Cause; the Tenant provided conflicting information about when she would be vacating the rental unit; and she was not certain the unit would be vacated until March 19, 2023, when the Tenant moved out.

The Tenant acknowledged that she was unable to vacate the unit on March 16, 2023, as she initially told the Landlord, but on March 16, 2023 she informed the Landlord's husband that she would be out by March 19, 2023.

The Landlord stated that she began advertising the unit on two popular websites on March 22, 2023 and she was able to find a new tenant for May 01, 2023. She is seeking compensation for lost revenue from April of 2023, because of the delay in advertising the unit prevented her from finding a new tenant for April 01, 2023.

The Tenant stated that she would have continued to live in the rental unit if the Landlord has not served her with notices to end tenancy and that she vacated the unit after applying to cancel the notices to end tenancy because she wanted to avoid further conflict. The Tenant does not believe she should be responsible for paying rent for April of 2023, as she vacated the rental unit prior to the end of March.

Analysis

On the basis of the undisputed evidence, I find that rent of \$1,600.00 that was due on March 01, 2023 has never been paid. As tenants are required to pay rent when it is due, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,600.00 in outstanding rent to the Landlord.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was personally served to the Tenant on March 02, 2023.

I find that the Tenants breached section 26(1) of the *Act* when they did not pay rent when it was due.

I find that the Tenants delayed the end of this tenancy when they filed an Application for Dispute Resolution to cancel a One Month Notice to End Tenancy for Cause and an amendment to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. I find the application to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities would have been dismissed, as the rent has not yet been paid and the Tenant submitted no proof of legal authority to withhold the rent.

Had the Tenants vacated the rental unit on the effective date of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I find that the Landlord may have had time to advertise the rental unit and find a new tenant for April 01, 2023. Had the Tenants not disputed the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities or the One Month Notice to End Tenancy for Cause, the Landlord may have concluded that the unit would be vacated prior to the end of March of 2023 and it would have been reasonable for the Landlord to find a new tenant for April 01, 2023. As the Landlord did not have reasonable assurance that the rental unit would be vacated by the end of March, I find it

reasonable that the Landlord did not begin advertising the rental unit until the rental unit was actually vacated.

I find that delay in advertising the rental unit made it difficult for the Landlord to find a new tenant for April 01, 2023. As the Tenants were directly responsible for the delay, I find that the Tenant must compensate the Landlord, pursuant to section 67 of the *Act*, for the lost revenue the Landlord experienced in April of 2023.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$3,300.00, which includes \$1,600.00 in unpaid rent from March of 2023, \$1,600.00 for lost revenue from April of 2023, 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 keep the Tenants' security deposit of \$800.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,500.000. In the event that the Tenant does not comply with this Order, it 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: June 22, 2023

Residential Tenancy Branch