



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, MNDC, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by both tenants and three agents for the landlord.

At the outset of the hearing the lead agent for the landlord testified that this hearing was the final action that her agency was taking as agent for the owners of the property and that they no longer had a key to the dispute address property.

As a result, I advised the parties in attendance that I would be considering amending the tenants' Application to name the property owners as respondents in addition to the already named property management agency or reconvening the hearing at a time when the owner's might attend.

From the landlord's agent's testimony the owners of the property were aware of all of the issues under dispute and the time of the hearing; that they were in transit at the time of the hearing returning to Canada at the instruction of their employer due to unrest in the country they have been residing in; and as noted the agents were attending the hearing to represent the interests of the owners.

I acknowledge that the agents, prior to the hearing, attempted to have the tenants re-schedule the hearing to another date and that the tenants refused to re-schedule. I note there is no requirement that either party re-schedule a hearing at any time or for any reason. I also note the agents have indicated they no longer have a key to the rental property and they may not be able to affect any orders resultant from this hearing.

To determine an appropriate course to take I must consider any prejudice to both parties for either amending the Application or adjourning the hearing. I find no prejudice to the owners of the property if I amend the Application as they are already represented by the agents.

If the owners had concerns that could not be addressed by the agents they had an opportunity to submit additional evidence and statements or even a request for an adjournment until they could attend.

However, I find that if I were to delay this decision to reconvene the hearing at a time when the owners were available, a time unknown to the agents, the tenants who are seeking possession of the rental unit and currently are without a permanent residence would in fact be prejudiced.

For these reasons, I amend the tenant's Application to include the names of the owners of the property in addition to the property management agency.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to an order of possession; to a monetary order for compensation for damage or loss and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 16, 49, 54, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by both parties on February 13, 2012 for a 6 month fixed term tenancy beginning on March 1, 2012 for a monthly rent of \$1,650.00 due on the 1st of each month with a security deposit of \$825.00 paid.

The landlord's agent submits that either on February 17 or 18 2012 the agent received word from the owners that their circumstances had changed and that due to violence in the country they were working in was becoming so volatile that they would need to return to Canada and would be moving back into the rental unit.

The parties agreed the tenants were informed of the decision of the owners and while both parties also agreed that the agents were helping them find an alternate arrangement the tenants were not happy with the approach the agents were taking and they have not been able to find suitable arrangements since.

The tenants seek the following compensation:

| Description | Amount |
|--|--------------------|
| Gas and vehicle wear and tear for additional house hunting | \$300.00 |
| Compensation for time for additional house hunting | \$500.00 |
| Stress for last minute house hunting and not having a home | \$20,000.00 |
| Storage for household items (per month) | \$327.00 |
| Movers from storage to property (8 hrs at \$125.00) | \$1,000.00 |
| Temporary Lodging at a local resort | \$1,950.00 |
| Total | \$24,077.00 |

During the hearing the tenants indicated that the amount for temporary lodging that they have actually had to pay was \$1,050.00 as the only units available were smaller than that originally priced.

The landlord requested clarification from the tenants as to the compensation they would receive from their employer for costs associated with the move. The male tenant testified that he receives an amount equivalent to one month's salary as compensation from his employer for all costs associated with the move regardless of any of the circumstances surrounding a move.

This compensation is intended to compensate the tenant for normal costs associated with a move and when faced with additional costs such as storage because of the landlord to not provide the agreed rental the tenant does not receive any additional compensation from his employer.

Analysis

Section 16 of the *Act* states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

From the testimony of both parties and the submitted copy, the tenancy agreement was signed by the tenants and the landlord's agent on February 13, 2012 and the tenants provided the agents with a security deposit of \$850.00 on the same date. As such and in accordance with Section 16 I find the parties were bound by this agreement to the rights and obligations under the agreement and the *Act* effective on February 13, 2012.

Section 49 allows a landlord to end a tenancy for their personal use, as is the landlord's position in this case, by issuing the tenants a notice to end the tenancy effective on a date that must be no earlier than 2 months after the date the tenant receives the notice; the day before the day in the month, that rent is payable under the tenancy agreement; and if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

As this tenancy agreement was for a fixed term that was scheduled to begin on March 1, 2012 and end on August 31, 2012, I find the earliest the landlord could end this tenancy for their own personal use is August 31, 2012. As such, I find the landlord must grant possession of the rental unit to the tenants for the duration of the tenancy in accordance with all of the rights and obligations of both parties for that duration.

In relation to the tenant's claim for compensation for storage and additional moving costs to obtain their possession from storage, I find, since these costs have not yet been finalized as to the actual amounts the tenants may have to pay, the tenants' Application on these items is premature and I dismiss this portion of the tenant's Application with leave to reapply.

As to the tenant's claim for compensation for temporary lodging, I accept the tenants have paid \$1,050.00 for their current temporary accommodations. As the tenants have not paid rent to the landlord I find the tenants have not suffered any additional loss for rent for the month of March 2012.

While I agree the tenants did have to invest additional time to look for alternate accommodation I find the tenants have failed to provide any evidence to substantiate that they suffered a loss of \$500.00 for this time. I do find it reasonable that the tenants likely spent \$300.00 in additional gas and transportation costs and I grant them this compensation.

And finally as to the tenant's claim of \$20,000.00 for stress caused to their family as a result of the circumstances of this case, I find the claim to be exorbitant and for the most part I dismiss this portion, with one exception. I do recognize that these events have created additional stress for the tenants and their family and as such I grant the tenants the equivalent of 1 month's rent compensation.

Conclusion

I find the tenants are entitled to an order of possession effective **immediately after service on the landlord or the landlord's agents**. This order must be served on the landlord or the landlord's agents. If the landlord or the landlord's agents fail to comply with this order the tenants may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,050.00** comprised of \$300.00 for gas costs; \$1,650.00 compensation; and the \$100.00 fee paid by the tenants for this application. I order the tenants may deduct this amount from future rental payments in accordance with Section 72(2)(a).

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: March 14, 2012.

Residential Tenancy Branch