



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPC OPB MNSD O ET FF
CNC

Preliminary Issues

Upon review of the Landlords' application for dispute resolution they confirmed that they were seeking to obtain an Order of Possession based on a 1 Month Notice for cause and to obtain a monetary order for unpaid rent. They advised that they checked off numerous boxes to cover all possible ways to obtain the Order of Possession. The Tenants are still residing on the property and no expenses have been incurred as of yet for a bailiff. Therefore, the Landlords were withdrawing their requests for Orders of Possession for unpaid rent and breach of agreement, as well as their requests for other reason and to end the tenancy early. The Landlord's requested that I amend their application to include a monetary order for unpaid rent.

Based on the aforementioned I find the Landlord's application form included an oversight and/or clerical error by not selecting the box for unpaid rent when completing the application, as their intent is clearly stated in the details of the dispute. Therefore I amend their application, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlords and Tenants.

The Landlords filed on May 3, 2013, to obtain an Order of Possession for cause and a Monetary Order for: unpaid rent or utilities, to keep the security deposit, and to recover the cost of the filing fee from the Tenants for their application.

The Tenants filed on May 6, 2013, to obtain an Order to cancel a Notice to end tenancy issued for cause.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice to end tenancy issued April 19, 2013, be upheld or cancelled?
2. If upheld, should the Landlords be granted an Order of Possession?
3. Should the Landlords be awarded a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the tenancy agreement; the 1 Month Notice issued April 19, 2013; and a copy of a RCMP card listing file numbers pertaining to these Tenants.

The Tenant submitted documentary evidence which included a copy of the 1 Month Notice issued April 19, 2013.

The parties confirmed they entered into a month to month tenancy that began on February 1, 2013. Rent is payable monthly in the amount of \$1,200.00 and on February 1, 2013 the Tenants paid \$600.00 as the security deposit.

The Landlord testified that two of the Tenants, Q.S. and G.S. vacated the unit sometime before May 27, 2013. The female Tenant I.A. is still occupying the unit. The Landlord stated that during the first part of April 2013, her brother and co-landlord, A.F, was at the rental unit discussing the issues relating to the extra occupants that had moved onto the property when Q.S. attempted to punch him in the face. I.A. intervened and prevented Q.S. from punching the Landlord. After that date the Tenants began making allegations that the Landlord was breaking their things and that he pushed I.A.

The Landlord said they have received numerous complaints from neighbours regarding police attendance to deal with domestic disputes at the rental unit. So on April 19, 2013, the Landlord personally served the Tenants with the 1 Month Notice to end tenancy for cause. Since then the Tenants have failed to pay rent for May or June 2013 both of which were due on Income Assistance payment day.

The Tenant confirmed that an altercation took place with the Landlord A.F. in early April 2013. She testified that Q.S. was upset with the Landlord preaching to him so he “came off the floor and was going to punch the Landlord in the face, but I wouldn’t let him”. She alleged that the Landlord became physical at that point and he began to smash her possessions.

The Tenant stated acknowledged that the other two Tenants moved out without paying their rent but she paid the Landlord cash for her share. She argued that she was not provided a receipt but she knows for certain she paid rent.

The parties confirmed that there were other occupants residing on the property in recreation vehicles but those occupants have moved. There is however, one trailer still parked on the property.

The Landlord argued that no rent has been received cash or otherwise for May or June 2013. She is seeking possession of the unit for as soon as possible and a monetary order for the unpaid rent.

Analysis

Upon review of the 1 Month Notice to End Tenancy issued April 19, 2013, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenants in a manner that complies with section 89 of the Act. The effective date of the Notice is **May 31, 2013**, in accordance with section 53 of the *Act*.

The Notice was issued pursuant to Section 47(1) of the Act for the following reasons:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonable disturbed another occupant or the landlord
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord

- Tenant has assigned or sublet the rental unit/site without landlord's written consent.

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

In this case there is undisputed evidence that the Tenants allowed other occupants to reside on the property in recreations vehicles. Furthermore, the parties confirmed that an altercation took place between the Landlord, A.F. and Tenant Q. S., whereby Q.S. attended to punch the Landlord in the face. There is also undisputed evidence that the full rent has not been paid for May or June 2013 as required by the tenancy agreement.

Based on the aforementioned occurrences, I hereby find the Landlord provided sufficient evidence to uphold the 1 Month Notice. Accordingly, I dismiss the Tenant's application to cancel the Notice and I grant the Landlords an Order of Possession.

The Landlords claimed unpaid rent of \$1,200.00 which was due on the third Wednesday of April for May 2013 rent. In the absence of evidence to prove otherwise, I accept the Landlord's submission that no rent has been paid for May or June 2013. Accordingly, I find the Tenants failed to pay rent in accordance with the tenancy agreement; which is a breach of section 26 of the Act. Therefore, I award the Landlord a Monetary Award for May 2013 unpaid rent of **\$1,200.00**.

As noted above this tenancy ended **May 31, 2013**, in accordance with the 1 Month Notice. Therefore I find the Landlord is seeking money for over holding and use and occupancy of the unit for June 2013, not rent. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and then they will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of June 2013, in the amount of **\$1,200.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid Rent May 2013	\$1,200.00
Loss of Rent June 2013	1,200.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,450.00
LESS: Security Deposit \$600.00 + Interest 0.00	<u>-600.00</u>
Offset amount due to the Landlords	<u>\$1,850.00</u>

Conclusion

I HEREBY FIND the Landlords are entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenant.

The Landlords have been awarded a Monetary Order in the amount of **\$1,850.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I HEREBY DISMISS the Tenants' application, without 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: May 31, 2013

Residential Tenancy Branch

