



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent and money owed or compensation for damage or loss, for authority to retain the tenants' security deposit and to recover the filing fee.

The landlord's representative (hereafter "landlord") attended; the tenants did not attend the telephone conference call hearing.

The landlord provided evidence that they served each tenant with the landlord's Application for Dispute Resolution and Notice of Hearing by registered mail on February 14, 2014. The landlord supplied the registered mail receipts, showing the tracking number, and the tracking information.

Based upon the submissions of the landlord, I find the tenants were served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenants' absence.

The landlord was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-The landlord submitted that the tenants vacated the rental unit in March, without notice, and as a result, the landlord was no longer seeking an order of possession for the rental unit. I have excluded this request from further consideration.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, further monetary compensation, and to recover the filing fee?

Background and Evidence

The landlord provided evidence that this tenancy originally began on or about September 1, 2011, that another tenancy agreement was signed, for a tenancy beginning or continuing, on April 1, 2013, for a monthly rent of \$1850, and a security deposit of \$922.50 being paid by the tenants.

The landlord gave evidence that on January 30, 2014, the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by registered mail, listing accumulated, unpaid rent of \$9400 as of January 1, 2014. The effective vacancy date listed on the Notice was February 14, 2014.

The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenants had five days to dispute the Notice by making an application for dispute resolution.

The landlord submitted that the tenants made no further rent payments before vacating the rental unit.

The landlord's monetary claim is \$16,700, comprised of the following:

Unpaid rent for July & September 2013, \$1850 each month	\$3700
Unpaid rent for October, November & December, 2013 and January, February & March 2014, \$1900 each month	\$11,400
Loss of rent revenue for April 2014	\$950
Parking infractions	\$400
Bylaw fines for excessive noise	\$200
Bylaw fine for missed fire inspection	\$50

The landlord submitted a significant amount of documentary evidence, all of which I have reviewed; however, in response to my query, the landlord was not able to confirm that the tenants had signed a Form K, or a separate document confirming that the tenants had read the strata bylaws and agreed to abide by the same.

In response to my question as to whether or not the landlord had issued the tenants a notice of a rent increase, signifying authority for the rent to be increased from \$1850 to \$1900, which it did in October 2013, the landlord agreed that one had not been provided into evidence.

I have no evidence before me that the tenants applied to dispute the Notice.

Analysis

Based upon the landlord's undisputed evidence, I find the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, did not pay all the outstanding rent listed on the Notice or file an application for dispute resolution in dispute of the Notice within five days of service.

I further find that the landlord has proven that the tenants owed and failed to pay the rent for the months alleged, that is July, September, October, November and December 2013, and January, February and March 2014 as required by the tenancy agreement and section 26(1) of the Act.

As to the amount claimed, I am unable to determine that the tenants owed rent of \$1900 for October, November, and December 2013, and January, February, and March, as stated by the landlord, as I was not provided a notice of rent increase on the proper form as required by section 42(3) of the Act. I therefore am not prepared to award the landlord the additional \$50 per month for the months listed herein; however I find the landlord is entitled to the unpaid rent of \$1850 for each of those months.

For these reasons, I find the landlord is entitled to a monetary award for unpaid rent in the amount of \$14,800, for July, September, October, November and December 2013, and January, February and March 2014, or \$1850 each.

As to the strata fines for bylaw infractions, in this case the landlord failed to prove that the tenants sign a Form K-Notice of Tenant's Responsibility with the tenancy agreement, which is a written acknowledgement that the tenants, renting within a strata development, have received a copy of the strata bylaws and agree to abide by them.

Without the form being signed by the tenants, the rules or bylaws do not become part of the tenancy agreement, and consequently, the tenants are not obligated to abide by the bylaws or pay the fines, as these issues are considered outside the jurisdiction of the Residential Tenancy Act.

As I have no proof that the tenants have signed the Form K, which becomes part of the tenancy agreement, I find that the landlords have failed to prove that the tenants have violated the tenancy agreement or the Act, and I dismiss their claim for \$650, without leave to reapply.

As to the landlord's request for loss of rent revenue for half a month for April, as the hearing occurred on April 1, 2014, I find the landlord has not yet suffered a loss for that time period. I therefore dismiss their claim for \$950, with leave to reapply.

I award the landlord recovery of the filing fee of \$100.

Due to the above, I find that the landlord is entitled to a monetary award of \$14,900, comprised of unpaid rent of \$14,800 through March 2014, and the \$100 filing fee paid by the landlord for this application.

Conclusion

The landlord's application has been granted in large part.

The landlord has been granted a monetary award in the amount of \$14,900.

At the landlord's request, I allow the landlord to retain the tenants' security deposit of \$922.50 in partial satisfaction of their award.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$13,977.50, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

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* and is being mailed to both the applicant and the respondents.

Dated: April 01, 2014

Residential Tenancy Branch

