



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Landmark Realty Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for unpaid rent, a monetary Order for unpaid rent, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

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

May the landlord retain the security deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on September 1, 2013. Rent is \$699.00 per month, due on the 1st day of each month. A security deposit in the sum of 350.00 was paid. A copy of the tenancy agreement was supplied as evidence.

At the start of the hearing the tenants said that J.S., the applicant, was no longer their landlord.

J.S. testified that on June 1, 2014 he sold his property management company to another management company and, effective that date, he was no longer acting as agent for the landlord. At this point I asked if the current agent could be called into the hearing as he and J.S. have maintained contact regarding this tenancy.

The current agent, D.L. entered the hearing and provided affirmed testimony that effective June 1, 2014 he assumed property management duties and had been assigned as the rental unit owners' agent. J.S. has not been assigned as agent and his responsibility for the tenancy ended effective May 31, 2014.

J. S. and the current agent agreed that the only rent outstanding currently is \$317.00 owed in April 2014 and that debt is held by J.S., not the current agent. The security deposit is being held by the rental unit owner.

There was no dispute that on May 1, 2014 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of May 15, 2014 was served to the tenants.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,017.00 rent and \$150.00 utilities within 5 days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within 5 days.

The tenants said that they paid their rent on May 1, 2014 and came home to find the Notice issued on that date, attached to their door. The tenants did not understand why the landlord would issue a Notice for the sum indicated. The tenants said they did not owe any utilities, as they do not pay utility costs to the landlord.

The tenants did not dispute the Notice and since that time have paid June and July 2014 rent in full. This was confirmed by the current agent. The tenants said they have their bank receipts, showing payments made on the 17th of each June and July. The tenants stated that they have not received any rent payment receipts from the landlord and were expecting to meet with the landlord at 4 p.m. on the date of the hearing. They had yet to meet the new agent.

The current agent said that it is their practice to issue receipts for use and occupancy when a Notice has been issued and then rent payments are made. The agent could not confirm that this in fact occurred. The tenants said that they have some problems with their mail boxes as there is an issue with break-ins; but that they had not received any mail from the landlord.

The tenants confirmed that they do owe \$317.00 April 2014 rent, and that they plan on paying that sum. The tenants were confused by the Notice, given the amount of rent and the utilities claimed and that they planned on obtaining an explanation at the hearing.

J.S. stated that the sum indicated as utilities on the Notice was actually for an unpaid strata fine as the result of a disturbance caused by the tenants. The tenants said this was the first they had heard of a fine.

The landlord said he had numerous discussions with the tenants about disturbances and that on one occasion the police had to attend at the unit in response to a call from another occupant of the strata. The tenants agreed that the police had attended at their unit but, when the police arrived there was no problem; although the officer told them they could face a fine.

It was confirmed that the tenants have not yet received a copy of the strata rules and bylaws.

Analysis

In relation to the claim for unpaid rent; the applicant represented the landlord's interests as agent until the end of May 2014. Effective June 1, 2014 the applicant no longer had the right to represent the landlord; his authority had been transferred. The new agent had not assigned the applicant as their agent.

If this tenancy is to end I find that the landlord (the current agent) has the authority to issue notices and take action by way of an application for dispute resolution. This authority is defined in section 4 of the Act:

"landlord", in relation to a rental unit, includes any of the following:

(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

(i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

(c) a person, other than a tenant occupying the rental unit, who

(i) is entitled to possession of the rental unit, and

(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this

I find that the definition does not contemplate permitting a previous agent to assume responsibility for matters that have occurred since his authority as agent ceased.

When a Notice ending tenancy is issued it is expected that the Notice reflect the actual sums owed. In this case the agent included unpaid rent that was due on the date the Notice was issued. In fact, that rent was paid on the date it was due. The Notice also included utilities when the landlord was not owed any utilities. This could certainly lead to some confusion on the part of the tenants; although it is vital that any unpaid rent be paid or that a Notice is disputed, accompanied by proof rent was paid.

I have considered Residential Tenancy Branch policy in relation to the question of a possible waiver of the Notice ending tenancy. Waiver arises when rent has been paid after a Notice has been issued, particularly after the effective date of the Notice. When a landlord accepts rent for a period after the effective date of a Notice the intent of the landlord should be expressed; either by issuing a receipt for use and occupancy only and/or a discussion where the tenants are specifically informed the rent is for use and occupancy only.

When asked, prior to the current agent entering the hearing, if they had received any receipts for use and occupancy the tenants were confused by the question and did not understand the term. The tenants did not deny receipt of mail and said that mail may well be missing due to security issues with the mail boxes. I found this testimony reliable and it leads me to find that if receipts were issued for June and July rent payments; they have not been delivered to the tenants.

The current agent's testimony was also reliable, in that he could only say it would be their practice to issue receipts for use and occupancy. The current agent could not say, definitively, that those receipts had been issued.

Therefore, in the absence of communication with the tenants, informing them that the June and July 2014 rent payments were accepted for use and occupancy only, I find that the Notice ending tenancy for unpaid rent issued on May 1, 2014 is of no force and effect and that the tenancy has been reinstated. The tenancy will continue until it is ended in accordance with the Act.

There is agreement by the current agent that the landlord is owed \$317.00 rent for April 2014 and that the applicant has the authority to obtain a monetary Order for that sum owed. Therefore, I find that the applicant is entitled to compensation in the sum of \$317.00 for April 2014 rent owed.

In the absence of any evidence of an investigation of disturbances allegedly caused by the tenants and in the absence of any verification of the sum claimed for strata fines, I find that the claim for strata fines is dismissed.

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

As the landlord is holding a security deposit and the tenancy is continuing I find that the deposit will continue to be held in trust.

Based on these determinations I grant the landlord a monetary Order in the sum of \$367.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The applicant is entitled to a monetary Order for unpaid April 2014 rent.

The security deposit will continue to be held in trust and is to be disbursed in accordance with the Act.

The 10 day Notice ending tenancy issued on May 1, 2014 is of no force and effect. The tenancy will continue until it is ended in accordance with the Act.

The applicant is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 18, 2014

Residential Tenancy Branch

