



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNR, DRI, RR, MT, MNDC, MNR
For the landlord: OPR, MNR, MNSD, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act ("Act").

The tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice"), to dispute an additional rent increase, for an order allowing a reduction in rent, for an order granting more time to make an application to cancel a notice to end tenancy, a monetary order for money owed or compensation for damage or loss, and a monetary order for the cost of emergency repairs.

The landlords applied for an order of possession for the rental unit pursuant to their Notice, a monetary order for unpaid rent, for authority to retain the tenants' security deposit, and for recovery of the filing fee paid for this application.

The landlords attended the hearing; the tenants did not attend.

The landlords submitted the registered mail receipts showing they served the tenants their application for dispute resolution and notice of hearing letter by registered mail to the tenants on June 20, 2015.

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

Thereafter the landlords were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the 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.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Procedural matter-Despite having their own application for dispute resolution set for hearing on this date and time, the application of the landlords and the Notices of these Hearings, the tenants did not appear.

Therefore, pursuant to section 10.1 of the Rules, I dismiss the application of the tenants, without leave to reapply.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for the rental unit, to authority to retain the tenants' security deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

The landlords supplied a written tenancy agreement showing that this tenancy began on October 1, 2012, that monthly rent began at \$1100.00, and that the tenants paid a security deposit of \$550.00 at the beginning of the tenancy. The landlord also submitted that during the tenancy, the monthly rent obligation of the tenants was increased to \$1600.00, which included utilities, when the tenants took use and occupancy of the lower suite, or the entire home, whereas previously the tenants' rental unit was only the upper suite. The landlord submitted further that the tenants began paying the amount of \$1600.00 in September 2013.

The landlord submitted evidence that on May 27, 2015, they served the tenants with their Notice, by leaving it in their mailbox, listing unpaid rent of \$3400.00 as of May 1, 2015. The effective vacancy date listed on the Notice was June 9, 2015.

The Notice informed the tenant that they had 5 days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice or to pay the rent in full; otherwise the tenants are conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

The tenants did file their application to dispute the Notice, but did not attend the hearing in support of their application and it has been dismissed.

The landlords submitted that since the Notice was issued to the tenants, tenant "LR" has recently vacated and that there have been no payments of rent. The landlord submitted further that their monetary claim of \$6600.00 encompassed possible unpaid rent for the month of July, which is now the case.

Analysis

I find the landlords submitted sufficient evidence to substantiate that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, that they owed the rent when the Notice was served, that they did not pay the outstanding rent within 5 days of receiving the Notice and did not both vacate the rental unit. Additionally the tenants did not appear at the hearing in support of their own application. I find the tenants are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I therefore find that the landlords are entitled to and I grant an order of possession for the rental unit effective 2 days after service of the order upon the tenant(s), pursuant to section 55 of the Act. The order of possession for the rental unit is enclosed with the landlords' Decision. Should the tenant(s) fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

As I have found that the tenancy ended on the effective date of the Notice, or June 9, 2015, the tenants are now overholding in the rental unit, without paying rent to the landlords, causing the landlords to suffer a loss of rent revenue for June and July 2015.

I therefore find that the landlords are entitled to a monetary award of \$6650.00 comprised of the outstanding rent of \$3400.00 through May, 2015, as listed on the Notice, loss of rent revenue of \$1600.00 for June and July 2015, *each*, and the \$50.00 filing fee paid by the landlords for this application.

At the landlords' request, I allow the landlords to retain the tenants' security deposit of \$550.00 in partial satisfaction of their monetary award.

I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$6100.00, which is enclosed with the landlords' Decision.

Should the tenants fail to pay the landlords 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.

Conclusion

The tenants' application is dismissed due to their failure to attend the hearing and as I have granted the landlords' application.

The landlords' application for an order of possession for the rental unit and a monetary order is granted.

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: July 15, 2015

Residential Tenancy Branch

