



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SRLAN HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

The landlord filed a direct request application on August 13, 2018, which was adjourned to a dispute resolution hearing, under the *Residential Tenancy Act* (the “Act”). The landlord seeks the following relief under sections 55, 67, and 72 (1) of the Act:

1. an order of possession of the rental unit for unpaid rent;
2. a monetary order for compensation for unpaid rent; and,
3. a monetary order for recovery of the filing fee.

This is my decision in respect of the landlord’s application.

A dispute resolution hearing was convened on September 28, 2018. The landlord’s agent (the “landlord”) and both tenants attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Preliminary Issue: Monetary Order for Compensation for Unpaid Rent

The landlord advised me at the start of the hearing that the tenants paid their rent (for use and occupancy only), and that the landlord was only seeking an order of possession and a monetary order for recovery of the filing fee. As such, I dismiss the landlord’s claim for a monetary order for compensation for unpaid rent without leave to reapply.

Issues to be Decided

1. Is the landlord entitled to an order of possession of the rental unit for unpaid rent?
2. Is the landlord entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The landlord testified that the tenancy began on December 1, 2009. Monthly rent is currently \$890.00, due on the first of the month, and the tenants paid a security deposit in the amount of \$375.00. A copy of the written tenancy agreement was submitted into evidence by the landlord.

The tenants did not pay rent on August 1, 2018, when it was due, and so the landlord subsequently issued a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on August 2, 2018. The Notice was served on the tenants in person by the building manager ("M.Q.") and witnessed by another individual ("R.Q."). The landlord submitted a copy of the Notice, along with a proof of service document, into evidence.

The landlord testified that the tenants did not pay rent within the five-day window permitted by the Notice. While the tenants ultimately paid their rent, they paid it late, and were issued rent receipts for use and occupancy only (copies of which were admitted into evidence.)

In their submissions and testimony, the tenants testified that they have paid rent late many times before, and that it had never been an issue. Further, the tenants testified that they had no idea that the landlord would file an application for dispute resolution, and that there was no prior communication with them regarding the landlord's intentions to so file.

Indeed, the tenants would have paid the rent on the first had they known the landlord would be filing, and that this is, and was, a misunderstanding. Ultimately, they paid the rent on August 10. Finally, they testified that they are good tenants.

In rebuttal, the landlord testified that the tenants have a history of repeated late payments. And, regarding the lack of communication regarding the landlord's intentions to file for dispute resolution, he noted that the Notice has all the instructions needed to dispute the Notice.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. Pursuant to section 46 of the Act, the Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days of service. The Notice also explains that the tenant had five days from the date of service to dispute the Notice by filing an application for dispute resolution.

The landlord testified, and provided documentary evidence to support his submission, that the tenants did not pay rent when it was due on August 1, 2018. The tenant testified that they did not pay rent until August 10, 2018. That the tenants have paid rent late in the past does not give them a legal right to continue to pay rent late. No agreement between the parties (other than an amended tenancy agreement that might somehow permit late rent) will bypass the requirement under the Act to pay rent when it is due.

Finally, there is no evidence before me to find that the tenants applied within five days to cancel the Notice. The landlord was not obligated to communicate his intentions to file an application for dispute resolution to the tenants: the Notice was his communication.

Taking into consideration all of the evidence and unchallenged testimony presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving his claim.

Therefore, pursuant to sections 46 and 55 of the Act, I grant an order of possession to the landlord.

As the landlord was successful in his application, I hereby grant the landlord a monetary award in the amount of \$100.00 for recovery of the filing fee, pursuant to section 67 of the Act. Pursuant to section 72(2) of the Act, I order that the landlord may deduct \$100.00 from the tenants' security deposit in full satisfaction of this claim.

Conclusion

I grant the landlord an order of possession, which must be served on the tenants and is effective two days from the date of service. The order of possession may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

I grant a monetary award to the landlord in the amount of \$100.00, and order that the landlord deduct \$100.00 from the tenants' security deposit in satisfaction of this claim.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: September 28, 2018

Residential Tenancy Branch