



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

File #910103946: CNC, FFT

File #910106281: OPR, OPC, OPN, MNRL-S, MNDCL-S, FFL

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the "Act"):

- an order pursuant to s. 47 cancelling a One-Month Notice to End Tenancy; and
- return of the filing fee pursuant to s. 72.

The Landlords file their own application seeking the following relief under the *Act*:

- an order of possession pursuant to s. 55 after issuing a 10-Day Notice to End Tenancy;
- an order of possession pursuant to s. 55 after issuing a One-Month Notice to End Tenancy;
- an order of possession pursuant to s. 55 after the Tenants provided notice to vacate the rental unit;
- a monetary order pursuant to ss. 38 and 67 seeking compensation for unpaid rent by claiming against the deposit;
- a monetary order pursuant to ss. 67 and 38 compensating for loss or other money owed by claiming against the deposit; and
- return of the filing fee pursuant to s. 72.

C.H. and P.H. appeared as the Landlords. J.H. attended the hearing with P.H.. Neither of the Tenants attended the hearing, nor did someone attend on their behalf.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing.

I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord C.H. advised that their Notice of Dispute Resolution and evidence was served on the Tenants via registered mail sent on May 9, 2023. I am told that the registered mail was returned to them.

I find that the Landlords served their application materials in accordance with s. 89 of the *Act*. There is no explanation as to why the Tenants did not retrieve their mail and Policy Guideline #12 is clear that mere failure to do so is insufficient to displace the evidentiary presumption of service established by s. 90 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenants received the Landlords' application materials on May 14, 2023.

Preliminary Issue – Tenants' Vacated the Rental Unit

The Landlord C.H. advised that the Tenants vacated the rental unit sometime before June 4, 2023, which is the day that the Landlords took back possession.

I accept the undisputed testimony from C.H. that the Tenants have vacated the rental unit and that the Landlords have taken back possession of the rental unit on June 4, 2023. I find that the various claims regarding orders of possession or cancelling a notice to end tenancy is moot. The tenancy is over.

As such, I dismiss all the Landlords' claims under s. 55 of the *Act* without leave to reapply. I further dismiss the Tenants' application, including their claim for the filing fee, without leave to reapply.

The hearing proceeded strictly on the issue of the Landlords' monetary claims.

Issues to be Decided

- 1) Are the Landlords entitled to a monetary order for unpaid rent?
- 2) Are the Landlords entitled to a monetary order for other compensation?
- 3) Are the Landlords entitled to their filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

General Background

The Landlords confirm the following details with respect to the tenancy:

- The tenancy began on September 1, 2019.
- The Tenants vacated the rental unit sometime before June 4, 2023.
- Rent of \$1,776.00 was due on the first day of each month.
- A security deposit of \$875.00 and a pet damage deposit of \$450.00 were paid by the Tenants.

I am provided with a copy of the original tenancy agreement by the Landlords. It lists B.W. and D.F. as co-tenants. As explained to me by the Landlords, D.F. provided notice to vacate the rental unit following a breakdown in his relationship with B.W.. The Landlord's evidence includes a note dated May 2, 2022 from D.F. indicating he would move out on June 30, 2022.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

1) Are the Landlords entitled to a monetary order for unpaid rent?

The Landlord C.H. explains that the Tenants failed to pay rent for March 2023 until April 3, 2023 and that no other rent payment was received by the Landlords after that date. I am provided with banking information from the Landlords as proof of the payment history from the Tenants.

I accept the Landlords' undisputed evidence that Tenants did not pay rent for April 2023 or May 2023. I find that this is in breach of the Tenants obligation to do so under s. 26 of the Act and in breach of the tenancy agreement. I further find that the Landlords suffered financial loss that could not have been mitigated as the Tenants continued to reside within the rental unit.

I find that the Landlords are entitled to unpaid rent totalling \$3,552.00 (\$1,776.00 + \$1,776.00).

2) Are the Landlords entitled to a monetary order for other compensation?

The Landlords seek lost rental income based on the difference between rent paid by the Tenants and market rent that could have been earned, which they tell me is \$2,400.00. As argued by the Landlords, when they received the notice from D.F. on May 2, 2022, they treated it as an end to the tenancy agreement, which included B.W..

The Landlords tell me that they attempted to enter into a new tenancy agreement, with rent at \$2,400.00, but that B.W. refused. The Landlords further tell me that they provided B.W. an additional two months after June 30, 2022 to find alternate accommodations. It was stressed that this was for use and occupancy only. The Landlords finally tell me that the Tenant did not move out on September 1, 2022. Accordingly, the Landlords seek the differential between \$1,776.00 and \$2,400.00 from September 1, 2022 until the Tenants vacated in or about June 4, 2023.

Policy Guideline #13 is clear that in these types of circumstances, a co-tenant wishing to continue with the tenancy must discuss the matter with the landlord and enter into a new written tenancy agreement. It is also clear that when a co-tenant continues to reside in the rental unit and pays rent, there may be an implication that a new tenancy has started.

The issue with the Landlords argument is that if they did see B.W. as overholding and that there was no tenancy agreement with her, they should have obtained an order of possession. Even if I were to accept that the tenancy ended on June 30, 2022 such that after that point B.W. was overholding, it is inappropriate to find that the Tenant is responsible for the difference in rent between what they paid and market rates when the Landlords could have taken steps to obtain an order of possession. The Landlords chose not to do so, thus failing to mitigate their damages.

I find that the Landlords have failed to mitigate their damages such that they are not entitled to this portion of their claim. It is dismissed without leave to reapply.

3) *Are the Landlords entitled to their filing fee?*

The Landlords' claim for monetary compensation exceeded that for unpaid rent, such that I find that they were largely unsuccessful in their application. As such, I find they are not entitled to their filing fee. Their claim under s. 72 of the *Act* is dismissed without leave to reapply.

Conclusion

I grant the Landlords an order for unpaid rent and direct that the Landlords retain the security deposit and pet damage deposit in partial satisfaction of this amount. In total, I order that the Tenants pay **\$2,227.00** to the Landlords (\$3,552.00 - \$875.00 - \$450.00).

All other aspects of the Landlords' application are dismissed without leave to reapply.

It is the Landlords obligation to serve the monetary order on the Tenants. I am told that the Tenants did not provide a forwarding address. Be that as it may, the Landlords are still obliged to serve the order by ascertaining a means of serving the Tenants. If the Tenants do not comply with the monetary order, it may be enforced by the Landlords at the BC Provincial Court.

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: June 26, 2023

Residential Tenancy Branch