



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, FF

Introduction

This matter dealt with an application by the tenants to cancel a Notice to End Tenancy for Unpaid Rent and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with s. 89 of the *Act*. They were served personally on the landlord on, April 09, 2009. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing and the hearing proceeded in the landlords' absence.

Both parties were provided the opportunity to present evidence and make submissions. As the landlord did not appear the submissions were made by the tenant. On the basis of the evidence presented at the hearing, a decision has been reached.

Issues(s) to be Decided

- Was there any outstanding rent owed to the landlord by the tenants at the time the 10-Day Notice was issued and served?
- Did the tenants file their application within the accepted time frame?
- Are the tenants entitled to recover their filing fee?



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Background and Evidence

This tenancy started on or about August 01, 2004. Rent was agreed at \$ 875.00 per month payable on the 1st of each month. This tenancy was a month to month agreement. The tenant paid a security deposit to the landlord on or about August 01, 2004 of \$437.50. The landlord did not complete a move in condition inspection report.

On February 16, 2009 the landlord served the tenants with a Two Month Notice to End Tenancy on April 30, 2009 because the landlord wanted to carry out some renovations to the property which required vacant possession. Due to this notice the tenants withheld their rent for April, 2009.

The landlord served the tenants with a 10 Day Notice to End Tenancy for unpaid rent on April 02, 2009. The tenants did not file their application to dispute this Notice until April 09, 2009 and were not within the five days allowed. However, as the 10 Day Notice has no effect because the amount of rent that is unpaid is an amount the tenant is permitted under the Act to deduct from rent, section 46(3) of the *Act* I have allowed the tenants application to be heard.

The tenants moved out of the rental unit on April 29, 2009 within the required date the landlord gave on the Two Month Notice to End Tenancy. The landlord did not complete a move out condition inspection report and has not yet returned the tenants security deposit.

Analysis

When a tenant is given a Two Month Notice to End tenancy from a landlord the tenant is entitled to receive from the landlord on or before the effective date of the landlords

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notice an amount that is equivalent to one months rent. A tenant may withhold the amount authorized from the last months rent and that amount is deemed to have been paid to the landlord Section 51 (1) (1.1) of the *Act*. Therefore, the tenants acted in accordance with the *Residential Tenancy Act* and the landlords notice is cancelled.

The tenants have not received back their security deposit and any accrued interest. If they do not receive this back within 15 days after providing the landlord with their forwarding address they are entitled to file an application for Dispute Resolution to recover this amount with interest calculated in accordance with the regulations. As the landlord did not comply with the requirements to carry out a move in or move out condition inspection report he is not entitled to retain the tenant's security deposit.

Conclusion

The tenant's application is allowed. The 10 Day Notice to End Tenancy for Unpaid rent is cancelled. A Monetary Order in the amount of **\$50.00** has been issued to the tenant and a copy of the Order must be served on the landlord. The Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: May 11, 2009.

Dispute Resolution Officer