



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes For the tenants; (CNC, CNL, CNR, MNR), FF

For the landlords; (OPR), MNR, FF, O

Introduction

This decision deals with two applications for Dispute Resolution, one brought by the tenant and one brought by the landlords. The tenant raised issues of Jurisdiction and the hearing was adjourned until jurisdiction could be established. The hearing was reconvened on September 03, 2009. Both files were heard together.

The landlord seeks an Order of Possession for unpaid rent, a Monetary Order to recover unpaid rent and to recover the filing fee. The tenant's request that the landlords One Month Notice to End Tenancy is cancelled, the landlords Two Month Notice to End Tenancy is cancelled and the 10 Day Notice to End Tenancy is cancelled. The tenants also request a Monetary Order for the cost of emergency repairs and to recover their filing fee. At the outset of the hearing the parties amended their applications as the tenants have now moved out. The landlord no longer seeks an Order of possession and the tenants withdraw their application to cancel the Notices to end tenancy and to claim for the cost of emergency repairs.

I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing. Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are there arrears of rent and if so, how much?
- Whether the landlord is entitled to a Monetary Order to recover the unpaid rent, utilities and filing fee?
- Was a valid Two Month Notice to End Tenancy for landlords' use of the property properly issued?
- Was a valid 10 Day Notice to End Tenancy for unpaid rent issued?

Background and Evidence

This tenancy started On October 01, 2002. At the start of the tenancy the rent was \$450.00. In September 2006 the tenants spouse moved into the rental property and the rent increased by mutual agreement to \$600.00 to cover the additional costs.

The tenants has not produced any evidence that the rental agreement between the parties was a rent to own agreement therefore it has been established that the Residential Tenancy Office does have jurisdiction to hear these applications.

On April 29, 2009 the landlords issued the tenants with a Two Month Notice to End Tenancy for the landlord's use of the property. The date given on this Notice to vacate the property was July 01, 2009. The landlords testify that the tenants communicated with them that they would not be paying rent and would not vacate the rental property. The landlords then issued another Two 'Month Notice to End Tenancy for landlords' use of the property on June 01, 2009 to vacate on August 01, 2009. On June 01, 2009 the landlords also issued a 10 Day Notice for unpaid rent to end the tenancy on June 18, 2009. The landlords' claim that the Two Month Notices are no longer valid as the tenant did not pay rent for June, 2009 and therefore they request the 10 Day Notice is upheld.

The tenants agree that they did not pay rent for June, 2009 as according to the Residential Tenancy Act they are entitled to receive compensation equivalent to one months rent on the first

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Notice that the landlords issued in April, 2009. The tenants withheld this rent according to the Act. The tenants moved out on the 12 July, 2009 and agree that they do owe the landlord 12 days rent to the amount of \$232.25 for these days. The tenants agree that they owe the landlord utilities but have never had sight of the utility bill. As the landlord states that they have paid the amount of \$395.40 the tenants have requested the landlord send evidence of this payment to the Residential Tenancy Office to verify the amount paid.

Analysis

The residential tenancy Act s 51(1.1) states:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

As the tenants withheld their rent for June, 2009 according to s. 51 (1.1) of the Act the 10 Day Notice issued on June 01, 2009 by the landlords for unpaid rent is invalid. Therefore, I find that the tenants do not owe rent for June, 2009. By the tenant's own admission they did not move out until July 12, 2009. Therefore, I find they owe rent of \$232.25 for 12 days in July. The tenants also agree that they owe money for utilities. The landlord has sent in a Fortis BC utility bill for July 03 to August 21, 2009. This amount is for \$55.07. As the tenant moved from the property on July 12, 2009 I find they are only liable for a portion of this bill to the amount of



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\$13.21 not \$395.40 as originally suggested by the landlords as they have not provided any evidence to support this amount for utilities.

As neither party has been largely successful I find that each party must bare the cost of filing their own application.

I find the landlords are entitled to receive a Monetary Order for the following:

Unpaid rent for July, 2009	\$232.25
Total amount due to the landlords	\$245.46

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$245.46**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The tenant's application is dismissed in its entirety, without leave to reapply.

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: September 09, 2009.

Dispute Resolution Officer