



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy for Unpaid Rent as well as to recover the filing fee for this proceeding. The Landlord(s) applied for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding and to keep the Tenants' security deposit.

Issues(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Are there arrears of rent and if so, how much?
3. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started in approximately April of 2008. Rent is \$1,100.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$550.00 at the beginning of the tenancy.

The Parties agree that the previous owner of the rental property served the Tenants with a 2 Month Notice to End Tenancy for Landlords' Use of Property on or about August 14, 2009. The Landlord(s) purchased the rental property on August 27, 2009. On August 28, 2009, the Landlord spoke with the Tenants who asked her if they could apply the one month free rent compensation (pursuant to the 2 Month Notice) for their September rent and then pay October 2009 rent in part by applying the security deposit. The Landlord told the Tenants that as she was a first time Landlord, she wanted to get some information and advice and talk to her partner, Mr. Tillbury, about it.

Mr. Tillbury contacted the Tenants the following day and advised them that he was willing to withdraw the 2 Month Notice, however the Tenants said they were looking for a larger residence so they would be moving out. Mr. Tillbury advised the Tenants that he was unsure about giving them free rent for September 2009 and would prefer if they did pay rent for September but that if they were to find new accommodations he would try to work something out with the Tenants. The Tenants said this statement from Mr. Tillbury led them to believe that they could withhold their rent for September and as a

Residential Tenancy Branch
Ministry of Housing and Social Development

result, later that day, they used those funds to pay a security deposit and the first month's rent for a new rental unit.

The next day, August 30, 2009, Mr. Tillbury left a message for the Tenants advising them that the Landlord wanted the Tenants to pay rent for September 2009. The Tenants advised the Landlord on September 1, 2009 that they did not have a rent payment for September and as a result, on September 2, 2009, the Landlord served the Tenants in person with the 10 Day Notice to End Tenancy for Unpaid Rent.

Analysis

I find that there was no verbal agreement that the Tenants could withhold their rent payment for September 2009. In particular, I cannot conclude that Mr. Tillbury's statement that he'd try to work something out with the Tenants was an agreement he or the Landlord would forego rent for September. Furthermore, I find that when Mr. Tillbury made this comment, he had a reasonable expectation that if the Tenants found other accommodations, they would first get back to him to try to arrange something but they did not do so. Consequently, I find that there are no grounds for cancelling the 10 Day Notice and the Tenants' application is dismissed.

As a result, I find pursuant to s. 55(1) of the Act that the Landlord is entitled to an Order of Possession to take effect on October 15, 2009. I also find that the Landlord is entitled to unpaid rent for September 2009 in the amount of \$1,100.00 as well as the \$50.00 filing fee for this proceeding. I order pursuant to s. 38(4) of the Act that the Landlord keep the Tenants' security deposit in partial payment of the unpaid rent. The Landlord will receive a monetary order for the balance owing as follows:

Unpaid rent:	\$1,100.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,150.00
Less: Security deposit:	(\$550.00)
Accrued interest:	<u>(\$6.20)</u>
Balance owing:	\$593.80

As a result of the 10 Day Notice to End Tenancy having been upheld, the 2 Month Notice to End Tenancy is of no force and effect. Consequently, the Tenants will not be entitled to their last month's rent free.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

Conclusion

The Tenants' application is dismissed. An Order of Possession to take effect at 1:00 p.m. on October 15, 2009 and a Monetary Order in the amount of **\$593.80** has been issued to the Landlord. A copy of the Orders must be served on the Tenants; the Order of Possession may be enforced in the Supreme Court of British Columbia and 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: September 25, 2009.

Dispute Resolution Officer